

NOTICE OF FINAL RULEMAKING
TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable)** **Rulemaking Action**
R12-4-402 Amend
- 2. Citations to the agency's statutory authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 17-231(A)(1)
Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-238, 17-240, 17-250(A), 17-250(B),
and 17-306
- 3. The effective date of the rules:** Pursuant to A.R.S. § 41-1032, the rules become effective sixty days after being filed in the office of the Secretary of State.

 - a. If the agency selected a date earlier than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
Not applicable
 - b. If the agency selected a date later than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(B):**
Not applicable
- 4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
Notice of Rulemaking Docket Opening: 22 A.A.R. 2569, September 16, 2016
Notice of Proposed Rulemaking: 22 A.A.R. 2558, September 16, 2016
- 5. The agency's contact person who can answer questions about the rulemaking:**
Name: Celeste Cook, Rules and Policy Manager
Address: Arizona Game and Fish Department
 5000 W. Carefree Highway
 Phoenix, AZ 85086
Telephone: (623) 236-7390
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E-mail: CCook@azgfd.gov
Please visit the AZGFD web site to track progress of this rule and any other agency rulemaking matters at <https://www.azgfd.com/agency/rulemaking/>.

6. An agency's justification and reason why the rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

An exemption from Executive Order 2015-01 was provided for this rulemaking by Hunter Moore, Natural Resource Policy Advisor, Governor's Office, in an email dated August 15, 2016.

The Game and Fish Commission (Commission) proposes to amend its rule governing live wildlife, unlawful acts. The rule is amended to clarify that federal agencies or employees are not exempt from obtaining a state permit or license when conducting any activity listed under R12-4-402(A) and to ensure the Commission maintains jurisdiction and effective conservation over Arizona's wildlife and wildlife habitat.

There are many valid reasons to require a person or agency to apply for and obtain a state-issued license. The application process allows the Department to ensure duplicate projects are not occurring, and that proposed activities will benefit wildlife. The license process requires federal agencies to coordinate their activities with the Department, which ensures the best management outcome possible for Arizona's wildlife. The importance of requiring all entities, including federal agencies, to apply for and be provided a permit in Arizona is to protect the State's resources and assets (including water quality, quantity, and environmental health) from being compromised by unknown importation of aquatic and terrestrial wildlife, parasites, and diseases. The best way to reduce the risk of non-target importation is to screen importation through permits required in R12-4-402.

A primary objective of the proposed rulemaking is to protect aquatic and terrestrial wildlife populations in Arizona from harm that can occur as a result of an unauthorized release of native or nonnative wildlife by persons or agencies. The issue of greatest concern is the introduction of diseases to native and economically important recreational wildlife populations; this can be especially significant in the management of endangered species where disease status and susceptibility may not be fully understood. Introduced diseases have caused severe population declines in Chiricahua leopard frogs in Arizona and other frog species worldwide; and in little brown bats in the eastern U.S. Disease management is also critical for game species. Recent research on bighorn sheep pneumonia has determined that populations with the disease are susceptible to infection when exposed to a new strain of the causative bacteria. The introduction of chronic wasting disease in deer, elk, and moose by the translocation of these species is also a serious concern for state wildlife management agencies.

On the aquatic side, importations of fish have introduced parasites such as *Loma salmonae* and bacterial pathogens such as *Renibacterium salmoninarum*, the causative agent of Bacterial Kidney Disease. Although it has not been documented, Koi Herpes virus most likely was imported into Arizona with baitfish. The most recent examples of non-target importation from federal hatcheries include the following: 1) Bacterial Kidney Disease was found in multiple federal hatcheries in the last year; this resulted in the transfer of disease and a subsequent restriction on fish raised at the Tonto Creek, Silver Creek, and Canyon Creek State Hatcheries. These restrictions prevented the Department from stocking fish in multiple waterbodies in Arizona; resulting in a negative economic impact on several rural communities and the Department; 2) gizzard shad were first introduced accidentally into the Salt River System through the stocking of Channel Catfish from Inks Dam National Fish Hatchery located on the San Carlos Indian Reservation. They spawn in large numbers and can reach densities high enough to ensure large populations survive past the first year, and because adults are too

large to be prey for largemouth bass, they are essentially invulnerable to predation. The presence of gizzard shad has caused a major change in environmental interactions, negatively impacting the largemouth bass population in Roosevelt Lake. Roosevelt Lake is estimated to experience over 98,000 angler use days per year contributing over \$48 million dollars annually to Arizona's economy and is one of the top bass fishing lakes in western North America, holding multiple bass fishing tournaments every week for most of the year. The Department will spend millions of dollars over the next 10 years trying to reduce the impact of gizzard shad at Roosevelt Lake.

Federal agencies share the concern for introducing diseases to wildlife. Since the early 1900s the U.S. Department of Agriculture Animal Plant and Health Inspection Service (USDA-APHIS) has instituted requirements for the importation and interstate movement of livestock, crops, and more recently companion animals and some wildlife species. Each state, including Arizona, has regulations requiring animals coming into the state to have a certificate of veterinary inspection and to be free of certain regulated diseases; see A.A.C. R3-2-602 through R3-2-607. Included in these rules are "exotic mammals not regulated as restricted live wildlife by the Arizona Game and Fish Department." The Department recently revised live wildlife rules R12-4-405, R12-4-407, R12-4-410, R12-4-411, R12-4-413, R12-4-414, R12-4-422, and R12-4-430 to include a requirement for a certificate of veterinary inspection consistent with USDA-APHIS regulations and Arizona Department of Agriculture rules.

The authority to regulate release of wildlife in Arizona is held both by the U.S. Fish and Wildlife Service (USFWS) and the Department. While holding statutory authority for the management of all wildlife within the State, the Department is mandated by various federal laws to apply for and obtain federal permits from USFWS prior to conducting conservation activities within Arizona. The Endangered Species Act (ESA) requires a Threatened and Endangered Species Take Permit, Section 10 (a)(1)(A), for any activity that may intentionally "take" endangered species; under the ESA, "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

The Department is authorized for all "take" of threatened species through Section 6 of the Endangered Species Act which requires the states to have a certified conservation program in place through a Cooperative Agreement with USFWS, and through the development and submission of an annual work plan to USFWS. The Department also applies for and obtains several additional federal permits in order to maintain compliance with applicable federal rules and regulations.

The requirement that our federal partners obtain authorization from the Department to conduct research and management activities in Arizona is a decades old practice. The Department routinely issues annual Scientific Collecting Licenses (SCL), formerly referred to as a Scientific Collecting Permit (SCP), to federal agencies for management and research activities involving all wildlife species (amphibians, birds, crustaceans, mammals, mollusks, and reptiles). For example, the Department has issued SCPs to the USFWS Arizona Ecological Services Field Office (AESO) since at least 1986; and to the Bureau of Land Management since at least 1988. It is standard practice for the Department to issue permits to AESO for California Condor and Sonoran Pronghorn management and release, and the Department has issued annual SCPs to the USFWS for the purpose of

conducting Mexican Wolf recovery activities since 2010. In the last two years, the Department issued SCLs to at least 35 persons representing offices in nine federal agencies, including USFWS, U.S. Bureau of Land Management, USDA-APHIS, U.S. Forest Service, National Park Service, U.S. Department of Defense, Department of Energy, and U.S. Geological Survey. These licenses generally provide broad authorities for our partner federal agencies and ensure a safe and collaborative approach to wildlife management in Arizona. Since 1998, the Department has not denied an application for a SCL to a federal agency (the Department's license application records only go back to 1998).

Although we have issued SCL's to numerous federal entities, some federal interests have disregarded our requests to apply for and obtain a Department-issued permit. Over the past 10 years the U.S. Bureau of Reclamation (USBR) has stocked over a hundred thousand Razorback Suckers in the Colorado River without a valid SCL. Because there was no communication or coordination between the Department and USBR, which would have occurred if USBR had applied for a Department-issued permit, the Department has no information regarding what screening and health certifications were conducted prior to those stockings, thus potentially putting Arizona's wildlife at risk.

To reiterate the Commission's justification for amending the rule, the Commission expects persons and federal agencies to comply with State rules requiring permits for the importation of wildlife and further, that release of live wildlife without first obtaining the permission of the Commission is a violation of State statute. This requirement is for the protection of wildlife populations from disease and other negative events and is mandated by A.R.S. Title 17.

7. A reference to any study relevant to the rule that the agency reviewed and proposes to either rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not rely on any study in its evaluation of or justification for the rule.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

The Commission's rule protects native wildlife in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.

The Commission's intent in proposing the amendments indicated in this rulemaking is to strengthen its rule to avoid any unintended outcome that a federal agency can circumvent state permitting requirements before conducting any wildlife-related activities. The Department has always operated under the premise that our federal partners need state authorization for any wildlife activities, and, as a result of the internal review, the Department discovered that this requirement was not already codified in rule. Through this rulemaking, the Commission is codifying what the Department has already practiced; thereby, protecting the Department and our partners (federal or otherwise) from unforeseen legal issues.

The requirement that a federal agency must apply for and obtain a state license or permit in order to conduct wildlife-related activities is not a new requirement. Under A.R.S. § 17-238, the Commission, at its discretion and under such regulations as it deems necessary, may issue a permit to take wildlife for scientific purposes to any person or duly accredited representative of public educational or scientific institutions, or governmental departments of the U.S. engaged in the scientific study of wildlife. This is necessary because A.R.S. §17-102 states, wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the Commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the Commission.

On an annual basis, the Department issues approximately 48 scientific collecting licenses to federal agencies for a variety of activities involving wildlife; licenses and permits are issued for the purpose of establishing, monitoring, studying, surveying, and translocating wildlife. Since 1998, the Department has not denied a scientific collecting license applied for by a federal agency (the Department's license application records only go back to 1998). Federal agencies that have held or currently hold a Department-issued scientific collecting license include, but are not limited to, the Department of Defense, Department of Energy, Department of Interior, National Forest Service, National Parks Service, National Wildlife Refuge, U.S. Army Engineer Research and Development Center, U.S. Department of Agriculture: Animal and Plant Health Inspection Service, USFWS, U.S. Army, and U.S. Geological Survey.

There are many valid reasons to require any agency to apply for and obtain a state-issued license or permit. The application process allows the Department to ensure duplicate projects are not occurring, and that proposed activities will benefit wildlife. The license/permit process requires federal agencies to coordinate their activities with the Department, which ensures the best management outcome possible for Arizona's wildlife.

The Commission anticipates the proposed amendments will have little or no impact on the Department or other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The Commission anticipates the implementation of the rulemaking will have no measurable impact on Department operations, as the Department has been fully engaged in addressing live wildlife concerns and has an administrative process in place for special licenses and permits issued by the Department.

The Commission anticipates the Department will benefit from a rule that ensures the Department maintains jurisdiction over Arizona's wildlife and wildlife habitat.

The Commission believes the proposed rulemaking will enhance the Department's ability to protect the public health, safety, and welfare and native wildlife and wildlife habitat. The Commission anticipates the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Department. The Commission anticipates the rulemaking will result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission has determined the rulemaking will not require any new full-time employees. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Other than the cost of rulemaking, there are no costs associated with the rulemaking.

Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

Minor grammatical and style corrections were made at the request of the Governor's Regulatory Review Council staff.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The public comment period began on September 16, 2016 and ended on October 16, 2016. The Department received 1036 written public or stakeholder comments in response to the proposed rulemaking: 856 were form letters generated by a "Take Action" post from the Sierra Club's website and a "Take Action" e-newsletter (in partnership with KnowWho Services), 173 of the 856 were submitted after the comment period ended; and 180 were unique comments. Ten of the unique comments were KnowWho form letters that were revised by the commenter and a large portion of the remaining comments simply reiterate text from messages posted on the Lobos of the Southwest's, Grand Canyon Wolf Recovery's, and the Sierra Club's websites, and two of the 180 were submitted after the comment period ended. At the December 2016 Commission Meeting, which held the oral proceeding for this rulemaking, an additional 6 oral comments were received at the Friday meeting and 12 were received at the Saturday meeting. A summary of those oral comments is provided below. For the agency response, because a majority of the comments received during the comment period expressed similar concerns, the Commission is providing one comprehensive response instead of repeating similar responses to each individual comment. Most of the public comments to the Notice of Proposed Rulemaking mistakenly believe the rule amendment imposes a new requirement on federal agencies and the objective of the amendment is ultimately to deny a permit to release of Mexican gray wolves in Arizona. Both of these positions are incorrect. The rule amendment responds to the Commission's concern that its rules do not adequately require federal agencies to comply with state permit requirements. The rule amendment corrects an ambiguity but it does not create a new requirement as most federal agencies have routinely obtained state permits for activities involving live wildlife. As a result, the Department provided further explanation regarding the scope of the rule; addressing all wildlife impacted by R12-4-402 and the existing federal permitting process that has been in place for some time. For these reasons, the preamble has been revised to better communicate the justification for the proposed amendment. The public or stakeholder comments and the agency's responses are provided below.

The agency received the following comments in support of the rulemaking:

Written Comment: October 5, 2016. It is our land, not the feds. Keep on fighting.

Written Comment: October 5, 2016. Power resides with the states as it should.

Written Comment: October 6, 2016. It is our land, not the feds.

Written Comment: October 6, 2016. Do it.

Written Comment: October 16, 2016. I write in favor of amending R12-04-402 to require permission to release wild animals based on: 1. Health: The requirement of the agency to "prevent interactions between humans and wildlife that may threaten public health and safety" because of the threat of wolf rabies, and 2. Autonomous judgement: The requirement of the agency to independently assess the justification for any planned release. 3. Challenging the subspecies assignment: The need for a judicial review of subspecies assignment. Qualification: I write as a retired Professor of Pathology from the University of AZ who has lived in Blue AZ since 1989. I have closely followed the wolf introduction program since before its inception having given invited testimony to then Governor Symington. Among my 110 expert referred journal publications are many National Institute of Health funded papers (usually with me as the Principle investigator) dealing with quantitative analysis which makes me expert in scientific data collection and analysis. This and my medical background are relevant to the following discussion. Discussion: 1. Health: One of the main issues in human/wildlife interaction is the potential for rabies transmission, and the State maintains a program to monitor wildlife rabies reflecting this universally acknowledged serious issue. Human rabies from wolf attack has been known throughout history and, in some Third World nations, remains a significant health issue today. Wolves are notably effective vectors of rabies because of their size and viciousness, particularly in packs. Indeed few, if any, wildlife threats to humans are more deserving of fear than is a rapid wolf pack. MX has had repeated epizootic of rabies in its feral dogs and these have resulted in epidemics in humans as close as Hermosillo in Sonora. Feral dog rabies has been transmitted to TX coyotes which resulted in an epizoonosis in its southern counties necessitating dog quarantine. While MX has taken steps to reduce this hazard, much of the border zone with the US is not under effective government control. Now that wolves are allowed to range to the border it can be expected that some will migrate back and forth across the border, contact feral rabid dogs thus bring rabies back into AZ. USFWS procedures for monitoring wolves is solely via aerial search for wolves with functioning collars with aerial counting followed by helicopter landing, tranquilizing, and immunizing (including for rabies). These procedures are not allowed in vast parts of the wolves ranges such as in the Indian Reservations and in the Blue Primitive Area and other areas managed as wilderness where helicopter landing is prohibited. Accordingly, wolves in those areas are unimmunized and uncounted (see #2 below). It is impossible for USFWS to know elsewhere if there are individual or packs of wolves lacking functioning collars, particularly now that their area has expanded so massively. In the Indian Reservations, dog rabies immunization is encouraged but not required, and many dogs are not immunized thus providing an intermediate vector, that is from the unimmunized wolf to the dogs of the Reservations. 2. Autonomous judgement: Judgement regarding expansion of the areas of the state available for wolf introduction, and of the need for release of additional wolves or ultimately control of the population, is based on tenuous application of population studies of other wolf breeds in other states to those released in AZ. Wildlife biology is by its nature among the least precise

areas of "science" and extrapolations are made from studies of other wolf breeds in other parts of the country as to how many are required to obtain a sustainable population. Of many possible objections to such extrapolations is the fact the wolf's environment in AZ is far different from its close relatives living in the Upper Midwest or Rocky mountain states. However, USFWS through easily contested reasoning has proclaimed minimal population numbers as essential to fulfilling the requirement of the Endangered (ESA). It then does its annual count, and based on that determines how many more wolves need to be released. The method used to count wolves is extremely vulnerable to errors both subjective and objective. All of science is subject to intentional and unintentional error due to observer bias. Everyone involved in counting wolves and analyzing the data is aware that undercounting secures their jobs and over counting threatens them. Further there are no controls over the counts, that is the counts are rarely repeated any single year (although limited recounts in 2011 demonstrated errors of over 50%), and no independent entity restudies the results to determine their accuracy. All this strongly supports the Department's insisting on or performing an independent audit of the counting procedures. 3. Subspecies assignment: The determination that the Mexican gray wolf (MGW) represents a distinct population deserving of protection under the ESA was an administrative decision and it needs to be judicially challenged. Data concerning the prior population is scanty and controversial; specifically what phenotypic features justify such a designation. Canis lupus include the most phenotypic variable and fluctuating phenotypes among mammals. Consider the variances between the Pekinese and the Great Dane, yet those breeds are not designated subspecies but only breeds. The MGW, according to some records, were somewhat smaller and had a more pale coloration than their northern relatives. Considering the variance, wishing the species those distinctions do not justify a subspecies designation rather than one of breeds, and should not deserve ESA protection.

Agency Response: The Department appreciates your support.

The agency received the following written comments stating their opposition to the rulemaking:

Written Comment: October 7, 2016. I oppose the proposed rule change requiring U.S. Fish and Wildlife Service (USFWS) to get a state permit before releasing any additional Mexican gray wolves into the wild. I am frustrated and displeased that the Department is trying to undermine Mexican wolf recovery. Federal supremacy is a long established doctrine in American law. If you cannot follow the law, you should resign. Mexican wolves are a federally designated endangered species and I support their recovery.

Written Comment: October 7, 2016. I am writing to request that you not amend R12-4-402. The amendment would change the rule to require the UFSWS to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover Mexican gray wolves. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a

critical component of that recovery. Mexican gray wolves need science-based recovery, not political meddling.

Written Comment: October 7, 2016. I understand R12-4-402 would require a state permit before allowing the release of Mexican gray wolves to the wild. It is already hard enough for USFWS to do their job regarding protecting and building up the population of Mexican gray wolves under the ESA. This rule change is a bad idea as the state seems determined to exterminate these wolves.

Written Comment: October 7, 2016. Please do not make this rule change. Instead please eliminate the restriction on Mexican gray wolves being allowed above I-40.

Written Comment: October 7, 2016. I am writing to say I believe that the Commission's proposed rule should not be enacted.

Written Comment: October 7, 2016. It is already difficult for gray wolfs to recover in a growing human world. Allowing this rule to go through would make the gray wolf's battle even harder. Please make the right choice to help the gray wolves.

Written Comment: October 7, 2016. Please do not enact additional regulations on gray wolf release.

Written Comment: October 8, 2016. The proposed rule requiring a permit to release wolves is absurd and another barrier to prevent establishing a sustainable population. Stop obstructing the people's will, who overwhelmingly support wildlife and wolves.

Written Comment: October 8, 2016. Please do not apply the new rule which makes it more difficult to release additional Mexican gray wolves into the wild in AZ. To exist in a sustainable manner, more of these animals are needed in the wild; the additional numbers and the consequential improvement to their gene pool are critical. Although I live in the UK, I have visited AZ many times. I go for the unique wilderness and the wildlife that exists in AZ. I am sure these attractions contribute greatly to the tourism economy in the state, not everyone goes for golf and the Grand Canyon. Mexican grays have been persecuted for many years and now deserve our help to exist. Humans do not have the exclusive right to populate this planet to the detriment of all other species as we spread and sprawl across the globe. Please show some far-sightedness, economic awareness, and sheer compassion and help the population of Mexican gray wolves take their rightful place in the ecosystem as they have existed in AZ for hundreds of years.

Written Comment: October 8, 2016. Our federal government should protect wolves on our land for all citizens. State governments should not have the final say on wolf release programs.

Written Comment: October 8, 2016. It has been known for many years the importance of all animal species to our ecosystem and human survival. The protection and reestablishment of endangered species is of utmost importance to all. Once gone it cannot be brought back. Rule changes that put these species at risk, should not be made or even considered. We are the care takers of a fragile planet and we will be judged by future generations by how we leave it for them.

Written Comment: October 8, 2016. Mexican gray wolves are critically endangered and fall under the federal ESA. Your proposed ruling to require USFWS to get a state permit to release Mexican gray wolves into your state areas is only meant to stop their potential recovery and survival. Instead you should be trying to help protect the Mexican gray wolf from going extinct in AZ. With less than 50 wolves presently in AZ, you should be protecting them as much as you protect deer and elk. Instead you are all about roadblocks to allowing them to live in their native habitat. Do the right thing for the environment, the wolves, and the majority of your voters. Protect them and help them survive.

Written Comment: October 8, 2016. I disapprove of the proposed rule that would effectively inhibit USFWS from fulfilling their commitment to restoring the critically endangered Mexican gray wolf. Wolf recovery is very important to me for many reasons, and the more I study the wolf's place in the ecosystem, the more curious I become as to why there are not more wolf advocates in the world. There are many reasons that I believe it is crucial to restore wolf populations, especially ones such as the Mexican gray that is on the brink of extinction. As ethics sadly seem to be readily overlooked by government organizations, I have concluded that the strongest argument I can make for the wolves is based in science. Recently, biologists have discovered that the presence of wolves offers many benefits to other organisms, including humans. In every landscape they inhabit, wolves stifle the irruption of herbivores which allows for a greater diversity of flora and translates into many benefits for the entire environment. I wish I did not have to, but I feel it is necessary to remind your organization that as a government agency, it is your purpose to ensure the best quality of life for the public. This entails many factors, but the most overlooked of all is environmental stability. Restoring endangered wolves is an act that is proven to have great benefits to our world and the more we give to our world, the more we give to our people. I urge you to quit being short-sited and really take a look at how loss of biodiversity through causing the extinction of a species with red tape is going to affect the grandchildren and great grandchildren of the people of AZ. Good science is the only basis on which decisions concerning ecosystems should be made. Science strongly advocates for biodiversity and so should you.

Written Comment: October 8, 2016. The Commission proposed a new rule change in another attempt to drive the Mexican gray wolf to extinction. The rule change would require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos. Please do not do this. Protect the wolves, do not kill them.

Written Comment: October 8, 2016. I am writing about the rule change that will threaten protection of Mexican gray wolves. You must not allow this. These animals must be protected Do the right thing and do not change ruling.

Written Comment: October 8, 2016. It is imperative that you not slow the controlled release of gray wolves back into the wild. Nature requires balance and the proposed rule change will disrupt this balance and threaten the existence of gray wolves. Do not approve this rule change.

Written Comment: October 8, 2016 (received same form letter from 8 persons). The U.S. Fish and Wildlife Service is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. AZ has been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected Game and Fish Commission that what the lobos need is science-based recovery, not political meddling.

Written Comment: October 8, 2016. Within this proposal are stipulations which undermine the recovery plan for the Mexican gray wolf and further jeopardize the species and threaten their survival. Additionally, the proposal to include USFWS to gain state permission to release more wolves into wild as part of the recovery program adds further to the negative implications of the proposal should be rejected. To further convince you, USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releasing wolves into wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to wolf recovery is using politics to drive wolves to extinction. AZ has been emboldened by similar rules in NM that have temporarily halted wolf recovery pending a court challenge to their legality. I hope you take my comments into consideration and that the Commission votes against the rule change proposal.

Written Comment: October 9, 2016. Please oppose this rule change regarding release into the wild and work toward preserving and saving wolves instead of helping drive them to extinction. AZ would be a far better place where there more wolves and fewer politicians. Save AZ's glorious wild.

Written Comment: October 9, 2016. You guys do a great job. You do even a better job of serving the interest of a very small group of citizens while alienating the vast majority of AZ citizens that support the recovery of the wolf. In the case of the Department, it is the "tail that wags the dog." Do the right thing and support all indigenous wildlife.

Written Comment: October 9, 2016. Efforts by the Department to interfere with USFWS legal, science-based

responsibility to the American people to allow wolves to return and thrive in the Southwest is disturbing. The Department's proposed actions to require the federal agency to get a state permit reinforces AZ's reputation as a backward state stuck in the past. As demonstrated by your name, AZ views animals as "game;" targets or resources to be hunted. Policy is dictated by ranching and hunting interests, which abhors any competition, to the disservice of the majority of people who support wildlife conservation, including wolves. Lots of people want their wolf heritage restored. They want a return of balanced ecosystems where top predators are allowed to do their job with cascading benefits. To continue to throw up road blocks to keep a keystone species from returning to its rightful place is to ignore the will of the people, the law, the science, and the damage this does to your reputation. Drop your proposal to impede the federal agency and use your resources instead to fulfill your mission of conserving all wildlife.

Written Comment: October 9, 2016. We need USFWS to continue to be allowed to release and recover Mexican gray wolves into the wild without being impeded. Please do not support this change and further the extinction of these animals.

Written Comment: October 9, 2016. It is clear to me that the federal government has the legal right under the ESA to regulate and release endangered animals on federal land, state land, and private land to ensure the viability of said animals. States, including AZ and NM, do not have the right to interfere with that process. Further, from my observations, AZ and NM have been obstructing the recovery of the Mexican gray wolf for many years (this does not extend to the individual biologists involved). Therefore, I ask you to scrap the rule changes in R12-4-402.

Written Comment: October 9, 2016. As a citizen of the U.S. residing in AZ, I want it to be known that I do not support the proposed rule change to require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild. I want more Mexican gray wolves to be released into the wild in the state of AZ. I do not want the AZ Game and Fish Commission to participate in activities leading to the extinction of this and any other species. I want the AZ Game and Fish Commission to honor the ESA. Please follow the will of the citizens of the state of AZ and honor the law protecting endangered species and do not amend this rule.

Written Comment: October 10, 2016. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. AZ has been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected Commission that what the lobos need is science-based recovery, not political meddling.

Written Comment: October 9, 2016. I cannot comprehend how humanity does not care about species. I do not

agree with the changes of the rules about the Mexican gray wolf. This will put them into extinction. These incredible animals deserve to be defended. The planet needs us. It is true. I will never agree with this. I love wolves, animals, plants. The earth needs us. Please change this decision. We need them alive. Please help them.

Written Comment: October 10, 2016. Do not input the proposed rule change about wolves, states should not rule how endangered animals are treated, especially ones that roam to other states (and countries; i.e. MX). If anything, more limitations should be placed on cattle. You are making me dislike the taste of beef.

Written Comment: October 10, 2016. Please do not change the rules regarding lobos recovery. This law change will make it more difficult for the recovery of gray wolves.

Written Comment: October 10, 2016. As a frequent visitor to AZ and a resident of the Southwest, I am writing to request that you keep the current rules in AZ regarding Mexican gray wolf release and decide against the proposed rule change that would create yet another hurdle to releasing Mexican gray wolves in AZ. Mexican gray wolves play an important part in the ecosystem and are critically endangered. The existing rules already include strict requirements. The proposed rule change has no ecological basis, and is designed to protect a very small number of people who are prejudiced against wolves.

Written Comment: October 10, 2016. I oppose a bill that requires more bureaucratic red tape by requiring the state to review releasing additional Mexican wolves into the population would delay any effort. Seems like this effort toward success for the reintroduction of the Mexican wolf is constantly hampered by bureaucracy and not enough attention paid to the biology (genetics, historical habitats, etc.).

Written Comment: October 10, 2016. Please do not support the rule change. Releasing gray wolves need your support not rules to hinder their recovery. This change would make it even harder for the federal government to do its job and recover lobos.

Written Comment: October 10, 2016. Please do not require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild. This will damage their survival even more.

Written Comment: October 10, 2016. We attended a hearing in Flagstaff earlier this year concerning the Mexican gray wolf. We were incredulous hearing the testimony against this species. One woman claimed that a single wolf killed 200 sheep in one single night "just for the sheer pleasure of it." If you have the ability to think at all, you must conclude that this was simply not possible. And now we hear that you want to change the rules to make recovery near impossible. A healthy eco-system requires, no demands, the presence of predators. You know this to be true. Just look at what happened in Yellowstone Park after the reintroduction of wolves. We are asking that you not impede the progress of AZ's Mexican gray wolf recovery by not changing the rules

Written Comment: October 10, 2016. This proposed rule to require a permit for wolf reintroduction is unconstitutional and will only lead to loss of dollars for the state in endless court actions. It only is driven by a tiny minority who does not even understand the science behind the role of the lobo in the ecosystem. People do not like this, the people of AZ do not like this. It is unscientific and without any rationality to require a state permit for wolf reintroduction. I am embarrassed by your actions and deeply concerned as a scientist and retired land manager and property owner. My years of experience on the land have taught that planning, cooperation, and shared benefits are the real road to reaching the goals to benefit the public and wildlife.

Written Comment: October 10, 2016. Mexican wolves are vital for a healthy ecosystem in the Southern U.S. The ESA is clear, wolves must be reintroduced to their natural habitats. Please stop listening to special interests and look at the science. We need wolves, and they need us. Do the right thing and do not pass any rules to prevent the release of wolves or their ultimate survival in AZ. I will not visit a state that does not protect wildlife, including reintroducing wolves, and will keep my tourist dollars elsewhere. Please do the right thing for our wolves and their survival.

Written Comment: October 10, 2016. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. AZ has been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected Commission that what the lobos need is science-based recovery, not political meddling. The wolves are a natural resident of this land and a large positive factor in the balance of the environment of AZ and the Southwest. Cattle are not. Cattle are not worthy of protection, they are detrimental to the land, they carry diseases which can transfer to both native animal populations and in some cases human populations. Cattle are an invasive species to the American Continents and should not be afforded any protection based on political backslapping nor financial profits for the cattle industry. Stop interfering now in the law mandated recovery under the ESA.

Written Comment: October 10, 2016. Releases of wolves to the wild is a critical component of recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. AZ has been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. Abandon the rule that is slowing down the release of wolves and listen to scientists, not ranchers, hunters and fearful citizens. Wolves are beneficial to every environment and they have the right to live, free and unharassed.

Written Comment: October 10, 2016. Here are my comments regarding the proposed change to Rule R12-4-402(D), which states "Performing activities authorized under a federal license or permit does not exempt a

federal agency or its employees from complying with state permit requirements." I disagree with the proposed rule change. USFWS needs ultimate authority over live wildlife for these reasons at a minimum: Preservation and handling of wildlife affects habitats and populations that cross state boundaries. Preservation and handling of wildlife requires continual ongoing implementation of federal plans. The attitude of individual states on any given issue can change radically after any given election. Preservation and handling of wildlife should not be subject to disproportional influence by the self-interest of any industries, as is evidenced by how Mexican gray wolves are dealt with in NM. Preservation and handling of wildlife should not be subject to any individual state's biases. While it is honorable and appropriate that individual states should be consulted, federal oversight by definition results in the best decisions being made for said wildlife overall. Please vote against this proposed rule change.

Written Comment: October 10, 2016. I do not agree with the rule change that would require USFWS to get a permit before releasing any more Mexican gray wolves into the wild. This change will make it harder for the federal government to do its job of Mexican gray wolf recovery and could throw the wolf into extinction. At last count there were only 97 found in the wild. They are one of the most endangered wolves in the world and their population had declined 12% since last count. USFWS has a legal and moral obligation to follow best available science and to do whatever is needed for Mexican wolf recovery. Captive breeding program have worked to maximize genetic diversity so captive wolves were to be released to increase population and genetic diversity. Wolves are essential for restoring a healthy balance to the ecosystem. Wolves generate economic growth. Public polls show overwhelming support for wolf recovery in NM and AZ. I am a mother who cares about our wildlife and the health of our wildlands so my children and all others can enjoy the beauty of this country.

Written Comment: October 10, 2016. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. It seems that AZ has been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. What the lobos need is science-based recovery, not political meddling. And, I am certain you do not want to be entangled in a court challenge similar to that which your neighbor NM is now involved. Do not let politics slow wolf releases, please abandon this rule change.

Written Comment: October 11, 2016. I am writing in opposition to the proposed legislation to require the federal government to have to have a state permit prior to reintroducing the Mexican gray wolf to AZ forests. I am a strong advocate of keeping a healthy and thriving population of wolves in our forests and passing this legislation would severely hamper those efforts. Please reject this ruling.

Written Comment: October 11, 2016. This new change would make it even harder for the federal government to do its job and recover lobos.

Written Comment: October 11, 2016. U.S. Fish and Wildlife Service should not need a state permit before releasing any additional Mexican gray wolves into the wild. These are wonderful animals and should be repopulated before it is too late. Please oppose R12-4-402.

Written Comment: October 11, 2016. The Commission has proposed a new rule change in another attempt to drive the Mexican gray wolf to extinction. The rule change would require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild, but the State's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. AZ has been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. What the lobos need is science-based recovery, not political meddling. Please do not let politics slow wolf releases; we urge you, the Commission, to abandon this rule change.

Written Comment: October 11, 2016. I strongly oppose requiring USFWS to get a permit before releasing wolves. Wolves are a vital and necessary part of the ecosystem, as evidenced by what occurred in Yellowstone, where the environment is healthier than ever. Wolves also attract tourist dollars. Please let them do their work without more paperwork from you.

Written Comment: October 11, 2016. I oppose R12-4-402. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change would give too much authority to a state that has already demonstrated its hostility to wolf recovery. Such a rule would not be in the wolf's best interest.

Written Comment: October 11, 2016. I live in NM am writing in favor of the continuation of the wolf recovery program and against the proposed requirement of USFWS to obtain state permits to release more wolves. Our State benefits from tourism and the support of a healthy ecosystem that includes larger carnivores like wolves.

Written Comment: October 12, 2016. The rule to notify will severely undermine efforts for a wolf recovery for the fact that many times these releases are subject to a variety of unknown changes that can call them off or press them forward to involve such a complicated procedure will hinder efforts for a sustained recovery.

Written Comment: October 12, 2016. Wolves are a very important apex predator and a necessity in the health of our ecosystem. The reintroduction of the Mexican wolves is a success story in saving a highly endangered

species, but the wolves are not out of the woods yet. We, as humans, have an obligation to help this species succeed. This rule is a step in the completely wrong direction. Please do not throw any roadblocks in the efforts to save these majestic animals.

Written Comment: October 12, 2016. As a person who has worked very hard to see the Mexican wolf recover, I ask that the following things be done: 1) First and foremost, follow the ruling of a Federal judge saying a comprehensive recovery plan be written and followed by 2017. The last plan was written in 1982. 2) Follow the plan which should expand Mexican wolf territory into the Grand Canyon and Southern UT establishing population groups in this area plus AZ, NM and MX. 3) We have over 250 wolves in 34 Species Survival programs in the U.S. and MX; these animals are owned by USFWS and I have been working with them for 7 years at Wolf haven International. Our pre-release facility has 14 Mexican wolves, many born in 2015. Wolf Haven sent a family of 5 to Ladder Ranch this spring; that family is now a family of 11 (6 new pups born this year) and scheduled for release in NW MX where there is a small population of 20 wolves. It is shameful that MX is more supportive than AZ and NM in terms of releasing wolves into the wild. It took several law suits to get the 1982 plan written and to finally release these animals into the wild in 1998. Law suits are expensive for us to execute and you to defend. 5) Much of the land where cattle graze is owned by taxpayers. Voting data shows that over 80% of residents in both AZ and NM support wolves in the wild. 6) A robust population of animals is good for both the land and the herds that wolves hunt. 7) Ecotourism is a way for your states to make money. In the greater Yellowstone area, wolf viewing brings 35 million dollars per year to the local economy. In summary, we live in a democracy so let's follow the rule of the majority. We know that farmers and ranchers and wolves can live in harmony. There are zero depredations in the Frank Church Wilderness area in ID. This is due to Defenders of Wildlife teaching good animal husbandry techniques to ranchers and farmers and state programs that reimburse for depredation. Non-lethal techniques have been used in the heart of wolf and sheep country with success. People who donate to Defenders have paid for these programs and for depredation for many years. Why does AZ continue to obstruct progress? Do what is right and release wolves. Your ecosystem and the majority of citizens will thank you.

Written Comment: October 12, 2016. I am opposed to the proposed rule change that would require USFWS to get a state permit before releasing more Mexican gray wolves into the wild. This would make it harder for the federal government to do its job of recovering lobos. I live in the Mexican gray wolf recovery area of the White Mountains of AZ and appreciate seeing lobos when I go into the wild.

Written Comment: October 12, 2016. I wonder how it is you can proclaim on your website to "manage, protect and conserve wildlife resources" while at the same time work to obstruct the recovery of Mexican gray wolves. Science is our best guide to a healthy recovery and yet you have discarded the facts to push your own personal agenda. Arbitrary boundaries, lack of genetic diversity, and a poor history of decision making on the state level has led to a less than acceptable recovery plan and management. I oppose the proposed rule change

(R12-4-402) and hope that you take a long look at what this would mean when it comes to protecting and conserving the Mexican gray wolves.

Written Comment: October 12, 2016. I am very disappointed in how the Department is catering to a minority of individuals and not listening to the statewide and nationwide polls that strongly support Mexican wolf recovery. These animals are an important public trust resource for all citizens, not just folks that live in AZ. Do not sabotage and obstruct the recovery of this important animal. I am amazed at how anti-predator all state wildlife agencies are; even in urbanized Massachusetts. Please have your wildlife leaders work for wildlife, including predators, and not against them. Allowing AZ to blackball the Feds by denying permits is a low blow and should not be a part of the wildlife professionals' jobs to recover an international important animal, the Mexican Wolf.

Written Comment: October 12, 2016. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. AZ has been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected AZ Game and Fish Commission that what the lobos need is science-based recovery, not political meddling.

Written Comment: October 12, 2016. I have followed the recovery of the Mexican wolf and it is clear that more need to be released into the wild. The genetic make-up of the Mexican wolf is already compromised, but many normal wolves have been born in captivity. If they are not released, there will be major problems given the reduction of the wild population. I urge you not to succumb to pressure from the State regarding the release of the wolves. This will lead to further degradation of the gene pool and the ultimate extermination of this wonderful animal, which can ultimately result in an improved ecosystem, as have the gray wolves in Yellowstone.

Written Comment: October 12, 2016. The proposed rule change is another attempt to drive the Mexican gray wolf to extinction. The rule change would require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild, but the State's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos. Do not let politics slow wolf releases, please urge the Commission to abandon this rule change. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. AZ has been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. We must send a clear message to the unelected Commission that what the lobos need is science-based recovery, not political meddling.

Written Comment: October 13, 2016. This ruling needs to change, they need to release more Mexican wolves to keep the species going and have more diversity. These wolves are very essential to the environment. Without these predators there will be destruction to trees, rivers, etc. The deer, elk, and others will keep the trees at a certain level and they will not grow. Please see what happened in Yellowstone without the wolves and also see how reintroducing them Yellowstone is thriving. Since the Mexican wolf, *Canis lupus baileyi*, is the second-most endangered canid species in the US, genetic considerations must supersede any single state controlling or slowing recovery of this naturally, thinly dispersed species. Genetic science shows clearly that recovery from small populations must be assisted as quickly as humanly possible, due to issues of small populations trending toward homozygosity, continually diminishing in allelic diversity for so long as any subpopulation and, in this case, the entire population remains below numbers and genetic variation that allow for increase. See (Allee effect/Positive density dependence and easily-accessed peer-reviewed research on Minimum Viable wolf and mammalian Populations, which numbers tend to be above 500 to as much as 5,000 or more) for a more complete understanding by the Commission of the catastrophic effect of holding populations to small numbers and isolation through inhibiting continuing releases of new individuals. Because slight but important mutations occur, as well as due to the fact that offspring only contain one half of the alleles of any single parent, with some randomness occurring in what is passed on to offspring, there are different genes still available only in the captives that have been bred for just this purpose. In simple words, only continuing releases will save this desert country adapted species, through which the ecological health of the entire North American southwest depends. AZ shares borders with: 1. MX, although there are no wolves within hundreds of miles, the nearest first and very recent release and attempted recovery of less than ten so far in Sierra Madre Oriental, around the state of Nuevo Leon, several hundred miles; a tiny recently released population almost certain not to develop dispersers to AZ. 2. NM, a state actively attempting to resist actions of under ESA, although sharing the remnant tiny restored *Canis lupus baileyi* population. 3. CO, which has ruled in probable violation of Constitution, against active release and recovery; there are no known individuals of *baileyi* in the suitable habitat of southern CO. 4. UT, another state which suffered the eradication of wolves genetically highly similar to *C. l. baileyi*. 5. While there is 20th century evidence of extremely closely genetically related *baileyi* in southeastern CA, its presence there may be viable, but has never been assured. Evidence from Indian languages point to the probability, beyond the specimen taken in the 1920s. Thus, AZ exceeds its authority in attempting to prevent interstate recovery of an originally widely distributed US species whose habitat includes but is not limited to AZ. This is the legal essence upon which to cease attempt to control reintroduction and recovery. The original misguided eradication of this adapted subspecies from AZ and all states, and the succeeding eradication from mid-MX, all the way to related and necessary gene pool of the genetically different wolves of the Northern US, has led to an ongoing extinction crisis. The original 7 *C. l. baileyi* forebears captured for captive breeding and release constituted a severe bottleneck of relatively homozygous DNA, which is exacerbated literally dangerously increased through the limited reproduction now existing, through continuing to refuse release of offspring. This crisis' existence is supported by genetic science and actual DNA testing. Additional variation through differing

expression of genes occurs, and this important consideration requires that high variation be maintained without the restrictions which have hampered it right now only attained through continuing releases of captive variants, as the extremely tiny variation in the present wild population diminishes through losses and the low reproduction illustrated by the diminution which has begun to occur in that wild population. Eastern and Northern AZ especially is critical habitat and connectivity, although previous decisions preventing designation have been steered by corrupt politics rather than genetic and habitat realities. On the dangerous ecological mistake of limiting wolf presence: The Kaibab Plateau suffered a severe irruption of ungulates following eradication of *baileyi* conspecifics, and that irruption was followed by population overshoot, habitat degradation by that ecologically-released herbivore, and consequent mass starvation. Only the keystone apex predator, *C. l. baileyi*, can diminish such extreme fluctuations within the natural ecosystems it formerly balanced. As an illustration, please notice the presence of increased levels of communicable diseases in deer populations in the central and eastern US where human social resistance and lack of safe habitat for wolf presence (wolves are not dangerous to humans; humans are extremely dangerous to wolves) from TX. The genetic variability mentioned above is also a vital factor in adding disease resistance to the wolf population, another reason for assisting, not hampering new releases. As the Commission well knows, the NM judicial/political situation is only extant due to preliminary injunction in a lower court, and not through any accepted law. It is not proper to rule until that case is resolved fully, as the genetic loss is presently so critical that AZ is vital to the urgent need of the species and indeed, the entirety of the ecosystems in which it flourished and was the key faunal and floral diversifier. By attempting to add bureaucratic difficulties seems clearly to send this particular species into extinction. This is neither morally nor biologically or scientifically a correct action. The refusal to justify in your rulemaking Section 6 of any study, scientific, or public, is obviously unjustifiable in itself. The public good of both AZ's citizens, environment, and wildlife, as well as the US public and Federal Government's mandated interests, are or should be the major considerations. The Commission may be operating under fallacious and unscientific premises in any possible ruling concerning wolf effects on prey species, as predators are entirely dependent upon prey numbers, and not the reverse. Additionally, the entire US public, past, present, and future, have a primary stake in the recovery of wolves and the restoration of intact ecosystems, especially on federal and all state public lands. This consideration supersedes any single state or group of states' legislation, regulation, or rulings. AZ will, should this rulemaking be effected, set the state up for an unending series of costly judicial proceedings. This is due to the clear preference of the majority of the public for restoration of native species and healthy intact ecosystems on public lands and in any and all habitat critical for survival and genetic connectivity of a species. To pursue this unseemly rule will both guarantee extreme genetic jeopardy of this vital wolf, and will expose the inherent unethical intent of all who pursue this anti-wildlife, anti-environmental rule. The rulemaking contains language intended to obfuscate the nativity and historical existence of this species; it also appears to intentionally introduce vague falsehood, as predators tend to decrease communicable illness in ungulate herbivore species, and not increase its likelihood. While very few parasites use multiple host transmission, most and the most dangerous, result from overabundance of the herding species and the domestic introduction by livestock interests. Wildlife commissions in some states intentionally effectively "farm" species.

In states like ID, such efforts fail due precisely to ecological succession in natural areas. The wolves of ID play no part in elk reduction, proven by scientific study. Science has shown that no predator can endanger prey (the woodland caribou problem in BC is entirely a result of habitat loss, fragmentation by heavy road construction cutting forest up into easily entered segments by machine transportation of too many hunters and poachers, and insufficient previous consideration and protection against human take of those ungulates. The sole responsibility for such endangerment of prey species has historically been human hunting and exclusion by grazing interests. A minimum of around half a million wolves is scientifically estimated to have lived in balance with millions upon millions of ungulates in North America before the 1800s advent of heavy human presence and hunting pressures. Any other assertion is intentional or ignorant falsehood. MT and WY seek actively to continue to persecute and eradicate wolves, as was proven by their policies in effect as soon as federal protection was so corruptly lifted. Those Northern Rocky states attempt to farm ungulate species, preventing recovery of native *Ursus arctos* as well as *Canis lupus*. Science coming out of the isolated federally protected Yellowstone is showing that wolves are vital to prevention of erosion, maintenance of water quality, through their promotion of plant and animal diversity. Wolves keep wild ungulates moving, instead of sedentary, and thus the attempts to farm wild ungulates through preventing natural numbers of predators is counterproductive. The diversity increase occurring through unrestricted wolf presence includes migratory bird diversity, so important in every state, both to consumptive users, the far greater number of non-consumptive wildlife users, and to ecosystems from Arctic to tropics. This issue of interstate mobility, again, supersedes any “right” any single state has to prevent, slow, or even manage the recovery of any species. If necessary, this issue will be fought in costly judicial proceeding until that ecological and social reality prevails over special interest controls over any state wildlife agency. As a student of wildlife and ecology, and as a lifetime avid non-consumptive user of the US’ remaining public lands, as well as MX for both purposes, I take grave exception to the intent of this specific rulemaking, due to its obvious intent to prevent the recovery across a six-state area (ecologically identical wolves to *baileyi* also existed in TX and OK, making it de facto a seven-state area). The situation is desperate for this important species and AZ wildlife interests should rather make rules inviting swiftest possible active reintroduction and recovery.

Written Comment: October 13, 2016. I am writing to encourage no rule changes that would hinder the release of Mexican gray wolves in AZ.

Written Comment: October 13, 2016. Mexican gray wolves are already struggling to survive in this world, so why make it harder? The new rule that has been put out there makes it harder and takes longer for the wolves to be released. Being released into their natural habitat is a critical component for the recovery of a Mexican gray wolf, so making it wait longer to be permitted to enter its natural habitat can be damaging. This new rule is just another way to drive Mexican gray wolves to extinction. This new rule makes it harder for USFWS to do its job and would also cost the state time and money, which is something we do not have an infinite amount of. Also, some scientists have recommended that additional wolves be released sooner rather than later in order to

promote greater genetic diversity in the wolf population. Overall, this new rule will only hurt the Mexican gray wolves, not help them.

Written Comment: October 13, 2016. I am writing to encourage you to abandon the new proposal that is in the works to hurry the extinction of our Mexican gray wolves. Do you want to be responsible for the extinction of these wolves after all the work done to bring them back? The politics have to end, predators help keep our prey animals strong and end the life of those that are diseased or dying. Hunters do nothing to keep the herd strong, they take out the biggest and the best. I feel USFWS should focus their attention on nonnative species and turn the rest of their budget over to helping ranchers coexist with our predators. Why do not you put that in a proposal to them, our prey animals are a couple hundred miles away from becoming infected with CWD, why would you risk that over politics? Your job is to help wildlife, not just the ones ranchers and hunters like because they can be killed and eaten and do not get in their way. The boundary rule is another ridiculous part of the proposal, how can you try to limit where a wild animal goes? Mother Nature directs animals according to food, water, and wildness. The Grand Canyon area is perfect and just think how many bison calves the wolves would take; which would take care of another one of your problems naturally. Please, get the politics out and let science regulate our wildlife and quit making it impossible for these Lobos to survive.

Written Comment: October 13, 14, 15, and 16 and December 1, 2016 (received 856 form letters from Sierra Club/KnowWho Services as follows: 496 on 10/13/16; 136 on 10/14/16; 42 on 10/15/16; 9 on 10/16/16; and 173 on 12/01/16) I urge the AZ Game and Fish Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require USFWS to obtain a state permit before releasing additional wolves into AZ. This makes it harder for USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. AZ should work with USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program. Please reject this proposed rule.

Written Comment: October 13, 2016. The proposed new rule change is another attempt to drive the Mexican gray wolf to extinction. The rule change would require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos. Keep our environment alive, keep wolves alive, work to keep us all healthy.

Written Comment: October 13, 2016. The proposed new rule change is another attempt to drive the Mexican gray wolf to extinction. The rule change would require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully

clear. This new change would make it even harder for the federal government to do its job and recover lobos. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery. This proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. What the lobos need is science-based recovery, not political meddling. Please try to remember that the recovery of the Mexican gray wolf will, in the long run, have a positive effect on the local environment.

Written Comment: October 13, 2016. Wolf reintroduction has helped echo systems thrive. Yellowstone is a prime example with the Yellowstone River being restored after wolves began keeping elk on the move and from browsing and killing young trees. I urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in Arizona. The rule change would require the USFWS to obtain a state permit before releasing additional wolves into Arizona. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. Arizona should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program.

Written Comment: October 13, 2016. I urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require USFWS to obtain a state permit before releasing additional wolves into AZ. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. The Department should work with USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program. In AZ, we seem to have bureaucrats, led by our great governor and legislators, who do not understand the basic rule of common sense. Say after me, local bureaucrats are entitled to your own opinions, but not your own facts. Because I believe and act by science, I am pretty sure that there is little need for grazing land for cattle, sheep, etc. and we would all be well served by the return of wolves into our environment and eliminate animals of danger to the environment (livestock). These animals are to the soil what coal burning is to the air, out of date and doomed to fail.

Written Comment: October 13, 2016. My husband and I urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require USFWS to obtain a state permit before releasing additional wolves into AZ. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the

population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. AZ should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program. Please do not impede endangered species recovery.

Written Comment: October 13, 2016. I urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require USFWS to obtain a state permit before releasing additional wolves into AZ. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. AZ should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program. I would like to know why this interference is occurring. The job of USFWS is to manage just that. Adding an extra layer costs more time and money and causes a still further lack of things occurring in a timely fashion. Where will the money come from? The political layer has been taking on more and more of things that should be handled by the department that was designed to do it. As well educated people, often with experience in business you know what happens in business that is large and complicated and yet the boss tries to keep his fingers in all the pies. Don't. Be sensible and reasonable and trust and allow your people - the state employees - to do their jobs.

Written Comment: October 13, 2016. I urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require the U.S. Fish and Wildlife Service to obtain a state permit before releasing additional wolves into AZ. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. The state has already erected a number of barriers to wolf recovery; this would be yet another hurdle for the species and the federal government. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. AZ should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program.

Written Comment: October 13, 2016. The forest service tried to bring the wolf to Yellowstone in 1998. Really did work out. The cattle farms were upset because the wolf hunt the cattle for food, so they killed most of them. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our eco system. Please reject this proposed rule.

Written Comment: October 14, 2016. I oppose the rule change requiring USFWS to obtain a state permit prior to releasing Mexican gray wolves, the rule change has the potential to limit the number of wolves released into the wild, thereby limiting genetic diversity. Wolves, as do all predators, play a vital part in ecosystem

health, and anything which stands in the way of restoring natural balance is detrimental to the health of the grasslands and forests of this state. I urge the Commission to abandon the potential rule change.

Written Comment: October 14, 2016. WildEarth Guardians is a non-profit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. We operate an office in Tucson, AZ, have one category of members, and have 201 members and over 4,000 supporters in the state. We also have over 168,000 members and supporters nationwide, many who visit AZ. WildEarth Guardians has an organizational interest in the proper and lawful management of wildlife in AZ and across the American West. Our members, staff, and board members have significant aesthetic, recreational, scientific, inspirational, educational, and other interests in the conservation, recovery, and restoration of wildlife in AZ. Wildlands Network is a non-profit organization dedicated to ensuring a healthy future for nature and people in North America by scientifically and strategically supporting networks of people protecting networks of connected wildlands. Wildlands Network has staff in Tucson, Portal, and Flagstaff, AZ and the organization, staff, members, and board all have significant aesthetic, recreational, scientific, inspirational, educational, and other interests in the management, conservation, recovery and restoration of wildlife in AZ. Wildlands Network has over 14,064 members, with 284 members that reside in AZ, all of which are general members, which is the only category of individual membership for Wildlands Network. We appreciate your consideration of the following comments on the proposed rule, submitted on behalf of WildEarth Guardians and Wildlands Network. The views expressed are the official position of WildEarth Guardians. Likewise, the views expressed are the official position of Wildlands Network. The Commission's proposal seeks to amend AZ's existing wildlife importation permitting law and is being proposed under the auspices of ensuring the Department's continuing control over management of the state's wildlife resources. However, the proposed rule may have potentially devastating impacts upon recovery efforts for many of the State's most critically imperiled species of wildlife, including, for example, the recovery and reintroduction of federally protected Mexican wolves in AZ. With this rulemaking, the Commission is considering adding the following provision to the existing language: "D. Performing activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements." The proposed rule thereby seeks to codify in state law a requirement that federal agencies, such as USFWS, and their employees, must obtain Commission approval via the wildlife permitting requirements of the Arizona Administrative Code and Revised Statutes before carrying out their duties under federal laws, such as the ESA, 16 U.S.C. § 1531 et seq. The proposed rule's approach is legally deficient. First, the proposed rule violates the doctrine of preemption. Second, the Commission's reliance on NM's analogous approach to requiring federal agencies to obtain state wildlife permits is in error. Finally, we note that the Commission has violated the Administrative Procedure Act (APA) with regards to the promulgation of the proposed rule, and that the Commission's actions therefore cannot serve as the foundation for the promulgation of a valid rule. Accordingly, we request the Commission withdraw the proposed rule. The proposed rule would interfere with USFWS's ability to carry out its statutory responsibilities under the ESA. As a result, the proposed rule violates our nation's foundational legal doctrine of

preemption. The doctrine of preemption is a longstanding legal concept rooted in the Supremacy Clause of the US Constitution, which states that “[t]his Constitution, and the laws of the United States . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” The Supreme Court has interpreted this provision to mean that “the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government.” A federal law may preempt state law in three ways. First, Congress may expressly preempt state law by enacting a federal law that “explicitly define[s] the extent to which it intends to preempt state law.” Second, “Congress may indicate an intent to occupy an entire field of regulation, in which the States must leave all regulatory activity in that area to the Federal Government.” Third, “if Congress has not displaced state regulation entirely, it may nonetheless preempt state law to the extent that the state law actually conflicts with federal law.” Such a conflict may arise “when compliance with both state and federal law is impossible,” or “when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” Of primary relevance to the Proposed Rule at issue here are the first and third methods of preemption. Although wildlife management has traditionally been a subject of great state importance, the U.S. Court of Appeals for the Fourth Circuit has noted that “[s]tate control over wildlife . . . is circumscribed by federal regulatory power.” Thus, a state law that is either (1) expressly preempted by a federal statute, (2) in direct conflict with a federal statute, or (3) prohibitive of the accomplishment of a federally mandated objective, must fall to the “supreme law of the land,” as implemented by the federal government. While the ESA does not prohibit state regulation in the importation of wildlife outright, the ESA does directly preempt state laws and regulations addressing importation or exportation of ESA- listed species that conflict with the ESA. Section 1535(f) states, “Any state law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this chapter or by any regulation which implements this chapter, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this chapter or in any regulation which implements this chapter.” The U.S. Court of Appeals for the Ninth Circuit has interpreted this provision as not entirely forbidding state wildlife statutes, “[r]ather, it allows full implementation of [state law] so long as the [state] statute does not prohibit what the federal statute or its implementing regulations permit.” The Commission must recognize that ESA section 1535(f) prohibits, on preemption grounds, what the proposed rule attempts to achieve. First, the ESA’s express preemption provision preempts the proposed rule as written. Second, the provision preempts potential Commission permit denials against federal agencies, such as USFWS, under the proposed rule as applied. The ESA preempts, and voids, any state law or regulation concerning the importation of endangered species that prohibits that which is authorized under the Act. 20 Section 1539(j) authorizes the “release (and related transportation) of any population . . . of an endangered species . . . if the Secretary [of the Department of the Interior] determines that such release will further the conservation of the species.” The Secretary determined that the release of the endangered Mexican wolf under the experimental population provision of the ESA will further the conservation and recovery of the species. Thus, if a state law or

regulation prohibits the importation of endangered Mexican wolves into a state, and thus interferes with the release of experimental Mexican wolf populations, the ESA will supersede that state regulation. The proposed rule adds a provision to the existing Administrative Code section R12-4-402 clarifying that “[p]erforming activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements.” This revision is in direct conflict with section 1535(f) of the ESA. The proposed rule, as applied in the context of Mexican wolves, regards the importation of an endangered species and could prohibit or hamper the Mexican wolf reintroduction program authorized by section 1539(j) and the Mexican wolf experimental population rule. “It is well settled that ‘when Congress legislated within the scope of its constitutionally granted powers, that legislation may displace state law.’” “The plain meaning of [the ESA’s] preemption provision is that the ESA . . . displaces those state laws regulating ‘the importation or exportation of, or interstate or foreign commerce in’ endangered species.” The Ninth Circuit Court of Appeals has held the ESA preempts a state law where it would prohibit a federally authorized activity being carried out in accordance with the ESA. Congress made its preemptive authority clear in the ESA, and a state may not impose regulations to supersede a federal program concerning endangered species. Thus, the Proposed Rule is preempted at the outset considering the plain language of ESA section 1535(f). In addition to the added language of the proposed rule being preempted by the ESA in its own right, the proposed rule is preempted by the ESA as applied as well. For example, if the Commission were to use the proposed rule as justification to prohibit the importation of endangered species authorized under the ESA’s experimental population rule, the State would effectively be directly impeding an authorized federal program. In the context of Mexican wolves, for example, this would result in the direct inhibition of a federally approved reintroduction program. A state law must fall where it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” As such, any future Commission permit denials under the proposed rule would be expressly preempted by section 1535(f) because they would effectively (1) prohibit that which is authorized under the Act, and (2) serve to impede a federally mandated program. The Department of the Interior’s (“Interior”) “Fish and Wildlife Policy,” which describes Interior’s approach to state-federal relationships with respect to all wildlife laws (including the ESA) for all Interior agencies (including USFWS), is not to the contrary. 43 C.F.R. Part 24. This policy recognizes that “Congress has charged the Secretary of the Interior with responsibilities for the management of certain fish and wildlife resources, e.g., endangered and threatened species.” Id. § 24.3(c). However, “Federal authority exists for specified purposes while State authority regarding fish and resident wildlife remains the comprehensive backdrop applicable in the absence of specific, overriding Federal law.” Id. § 24.1(a). Importantly, though the policy states that, in carrying out “programs involving reintroduction of fish and wildlife,” USFWS “shall” “[c]onsult with the States and comply with State permit requirements in connection with [reintroduction programs],” the policy explicitly provides that the Secretary of the Interior need not comply with state permit requirements “in instances where [she] determines that such compliance would prevent [her] from carrying out [her] statutory responsibilities.” Id. § 24.4(i)(5)(i). As a result, though this policy shows a preference for complying with state permits, that preference is inapplicable where it conflicts with the federal law at issue. Because the Id. § 24.4(i)(5)(i) as written would

conflict with the ESA, there is no preference, and certainly no requirement, that USFWS comply with state permitting requirements. Accordingly, the Commission should withdraw the Proposed Rule on preemption grounds. The Commission states that the impetus for the proposed rule is the ongoing litigation concerning analogous wildlife importation permitting regulations applied to USFWS's Mexican wolf reintroduction and recovery program in the State of NM. However, the Commission's reliance on NM's intermediary success in obtaining a preliminary injunction in that case is in error. Notably, the decision is on appeal to the U.S. Court of Appeals for the Tenth Circuit. Additionally, USFWS and intervenors in the case (including WildEarth Guardians) have compelling arguments for why the preliminary injunction was rendered in error. We caution the Commission to avoid following in NM's footsteps in this regard, as NM is unlikely to prevail on the merits. First, as discussed above, the Commission cannot ignore that Interior's policy providing a preference for compliance with state permitting requirements contains an important exception for instances where compliance would "prevent" the Interior agencies from "carrying out" their "statutory responsibilities." The ESA requires USFWS to recover Mexican wolves. However, if the Commission denies USFWS state wildlife permits under the proposed rule, the State would effectively be preventing USFWS from carrying out the very actions it has determined are essential to recover the Mexican wolf. Among other things, wolf releases in AZ are necessary in order to improve the dwindling genetic diversity in the wild population. Without additional successful releases, the effects of inbreeding will increase and the population may not be able to survive. Second, and as also discussed above, the Commission cannot ignore the plain language of the ESA in an attempt to circumscribe federal prerogatives here. In carrying out its duties under the ESA, USFWS is charged with cooperating with the states to the "maximum extent practicable." The ESA does not allow states to exercise veto authority over USFWS's implementation of the Act. Interior's "Fish and Wildlife Policy" is not to the contrary, and, even if it ostensibly were, C.F.R. §24.4(i)(5)(i) must be read consistently with the provisions of the ESA and its implementing regulations, which make this lack of a state veto clear. As such, the Proposed Rule is an inappropriate attempt to exercise power over a federal agency that the State simply does not have. In short, the Commission's reliance on NM's recent attempts to obstruct the federal government from releasing critically imperiled Mexican wolves into that state in order to justify the proposed rule is in error and is highly vulnerable to a legal challenge. As discussed above, the Proposed Rule is in excess of the State's authority to act as a matter of federal law. However, it is also in violation of the APA. The APA "distinguishes between claims that a rule lacks conformity with an agency's statutory authority and claims that an agency failed to follow required procedures when promulgating a rule." *Samaritan Health Sys. v. Ariz. Health Care Cost Containment Sys. Admin.*, 11 P.3d 1072, 1076 (Ariz. Ct. App. 2000). While APA section 41– 1034 provides for the right to seek declaratory judgments regarding the substantive legal validity of rules, APA section 41–1030(A) provides that a rule is invalid unless it is promulgated in substantial compliance with the procedures required by the APA. See *id.*; see also, e.g., ARIZ. REV. STAT. § 41- 1034; ARIZ. REV. STAT. § 41-1030(A); *Ariz. State Univ. ex rel. Ariz. Bd. of Regents v. Ariz. State Ret. Sys.*, 349 P.3d 220, 227–28 (Ariz. Ct. App. 2015). The proposed rule represents both types of violations because it is in excess of the Commission's authority and because it is not being promulgated in compliance with the procedures required by the APA. First, for the same reasons that the

proposed rule is in violation of the federal prohibition against preemption, it is also in excess of the Commission's authority to promulgate this rule. This indicates that the proposed rule is also in violation of the substantive provisions of the APA barring agencies from engaging in rulemaking outside the legislature's grant of authority. See ARIZ. REV. STAT. § 41-1030(C) (forbidding agencies from promulgating rules "under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute authorizing the rule."); ARIZ. REV. STAT. § 41-1001.01(A)(8) (stating in the "Regulatory bill of rights" section of the APA that a person "[i]s entitled to have an agency not make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute."). The legislature could not, and in fact did not, provide the Commission with a grant of authority that would allow it to preempt the relevant provisions of the ESA. Therefore, in promulgating a rule that does just that, the Commission is acting in excess of its authority. As a result, even if the Commission does finalize the proposed rule, the Governor's Regulatory Review Council will have to strike the proposed rule down because it violates the Supremacy Clause. See ARIZ. REV. STAT. § 41-1052(D)(9) ("The council shall not approve the rule unless: ... The rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law."). With regard to the procedural violations, the Commission did not adequately provide published notice of "[t]he time during which written submissions may be made" in the Notice of Rulemaking Docket Opening. See ARIZ. REV. STAT. § 41-1021(b)(5); see also ARIZ. ADMIN. CODE § R1-1-205(B)(7) (requiring that the notice of rulemaking docket opening provide "[t]he time-frame the agency will accept written comments."). The Notice of Rulemaking Docket Opening only provides that comments will be accepted "Monday through Friday from 8:00 a.m. until 5:00 p.m." Ariz. Admin. Reg. 2569 (Sept. 16, 2016). This does not provide the date by which comments must be received, a crucial piece of information if individuals wish to have their comments considered by the Commission. This failure is a serious violation of the terms of the APA that could not be cured by the proposed rule, but we also point out that this information was not included in the proposed rule either. Therefore, the Commission left interested parties entirely unaware of the period during which they could provide comments on the proposed rule in violation of both the text and the purpose of the APA. See ARIZ. REV. STAT. § 41-1001.01 (outlining the APA's "regulatory bill of rights" that provides any person with the right to provide "written comments or testimony on proposed rules to an agency [and have] the agency adequately address those comments."); Ariz. Dep't of Revenue v. Care Computer Sys., Inc., 4 P.3d 469, 475–76 (N.M. Ct. App. 2000) (discussing public involvement purpose of the APA); Carondelet Health Servs., Inc. v. Ariz. Health Care Cost Containment Sys. Admin., 895 P.2d 133, 138, 141 (N.M. Ct. App. 1994) (same). The minimum time period for comments from the APA cannot cure this deficiency as it only provides a minimum time, "at least thirty days," and not an automatic, or even a presumptive, time limit. ARIZ. REV. STAT. § 41-1023(B); ARIZ. REV. STAT. § 41-1022(D). Furthermore, reading the "at least thirty days" language as obviating the need to provide a specific time period in the Notice of Rulemaking Docket Opening would read the express requirement that the time period be included in the Notice of Rulemaking Docket Opening out of both AZ Revised Statutes section 41-1021(b)(5) and AZ Administrative Code section R1-1-205(B)(7). Therefore, the failure to include a time by which all comments must be received is a serious

violation of the APA. As a result of these shortcomings, both the procedure used in the promulgation of the proposed rule and its substance are in violation of the APA, and the proposed rule is illegal for these reasons as well. In sum, we respectfully urge the Commission to withdraw the proposed rule and allow essential wildlife recovery programs to proceed in the State.

Written Comment: October 14, 2016. The USFWS appreciates the continued partnership of the AZ Game and Fish Department in the conservation and recovery of a number of our trust resources. For example, our agencies have a long history of working together on migratory birds, fisheries, National Wildlife Refuges, NRDA, and Mexican wolf recovery, and we expect to continue this collaborative relationship into the future. We are fortunate in our association with the AZ Game and Fish Department in that when we have had differences of opinion regarding resource management issues, we have collaborated to find amiable solutions to our differences. The proposed rule, R12-4-402, that is being considered by the AZ Game and Fish Commission would amend the current regulation which authorizes a federal agency to release wildlife in the State of AZ without a state permit, provided the release is accompanied by a federal permit. We would find it difficult to support the proposed rule change specifically because the proposed change could lead to limitations on the timing and number of releases that may be necessary for the management and ultimate recovery of the Mexican wolf. USFWS has the statutory responsibility to recover the Mexican wolf pursuant to the ESA and the regulations for the Nonessential Experimental Population of the Mexican wolf (80 Federal Register 2512, Jan. 16, 2015). We believe USFWS and the Department's work regarding recovery of Mexican wolves, as well as other species, has been exemplary without the proposed changes contemplated in R12-4-402. We fully intend to continue our praiseworthy State/Federal collaboration on natural resource management issues. However, we feel that we cannot support the proposed rule as drafted to the extent that it may limit our Federal statutory responsibilities. We appreciate the opportunity to comment and look forward to continuing our collaborative working relationship with you. **Subsequent Comment: December 1, 2016.** On behalf of the USFWS, this office offers this supplement to the USFWS's October 14, 2016 comments on proposed rule R 12-4-402. R 12-4-402 would amend the current regulation which authorizes a federal agency to release wildlife in AZ without a state permit provided the release is accompanied by a federal permit. The amendment would "clearly state that a permit or license issued by the Department or the Department of Agriculture is required when conducting any activity listed under R1 2-4-402(A) with live wildlife to ensure the Department maintains sovereignty over AZ's wildlife and wildlife habitat." We wish to clarify that USFWS has authority, pursuant to federal statutes and regulations, to engage in all activities regarding the reintroduction of the Mexican wolf in AZ. Pursuant to this authority, the Service may import, export, hold, and transfer Mexican wolves in the State of AZ; and release Mexican wolves on federal lands in AZ without a State permit. These actions are intended to fulfill the USFWS's statutory responsibility to recover the Mexican wolf pursuant to the ESA and the regulations for the Nonessential Experimental Population of the Mexican Wolf (80 Federal Register 2512, Jan. 16,. 2015). The Interior's policy on state-federal relations (43 C.F.R. 24.4(i)(5)(i)) contemplates that the USFWS will comply with State permit requirements when "carrying out research programs involving the taking or possession of fish

and wildlife or programs involving reintroduction of fish and wildlife," "except in instances where the Secretary of the Interior determines that such compliance would prevent him from carrying out his statutory responsibilities." This policy strikes a balance, recognizing a State's broad trustee and police powers over wildlife within its borders while at the same time reflecting the fundamental principle that the federal government retains ultimate responsibility for management of wildlife on public lands. Further, the ESA confers on the federal government wildlife management responsibilities for listed species that preempt contrary state regulation. Of course, once a species is delisted, management responsibilities return to the States except where federal law provides federal agencies responsibility for management on public lands. USFWS will not be able to carry out its responsibilities under the ESA if it is precluded from taking actions to promote the conservation of Mexican wolves because AZ has not issued a permit. Based on the best available scientific information, USFWS needs to improve the genetic diversity and reduce the kinship of the Mexican wolves in the wild to achieve recovery. USFWS is unable to address these genetic concerns without the ability to release wolves from captivity in the Mexican Wolf -Experimental Area in both NM and AZ. If R12-4-402 is passed, and USFWS is denied a permit from Arizona pursuant to R I 2-4-402, we believe USFWS could continue to move forward with wolf recovery efforts.

Written Comment: October 14, 2016. I worked for years to help bring about the reintroduction of the Mexican wolf. I both encouraged officials of the AZ Game and Fish and USFWS to release wolves in the appropriate area and launched an education program to educate the public to support efforts to bring back the lobo. I urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require USFWS to obtain a state permit before releasing additional wolves into AZ. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. AZ should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program.

Written Comment: October 14, 2016. Meddling in the wolf recovery program is typical of bureaucracy. The Commission's proposed requirement to USFWS would be an inferior disservice to the AZ public, especially supporters of the Department. We urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require USFWS to obtain a state permit before releasing additional wolves into AZ. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. AZ

should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program. Please reject this bureaucratic proposed rule.

Written Comment: October 14, 2016. I rarely send these sorts of messages, but I believe strongly in the preservation of endangered species. We have an obligation as humans to prevent the extinction of our fellow creatures on this planet; we must be stewards and not short-sighted, careless squanderers of our biodiversity. So I urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require USFWS to obtain a state permit before releasing additional wolves into AZ. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. AZ should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program. Please reject this proposed rule.

Written Comment: October 14, 2016. This proposed rule appears to be nothing more than a bureaucratic obstacle to a federal agency with a duty to recover the Mexican gray wolf. The rule is unneeded because the Department already has the ability to work cooperatively with, and provide input to, USFWS if it so chooses. Even worse, the rule is a waste of resources at both the state and federal level. Please reject this proposed rule.

Written Comment: October 14, 2016. I urge the Commission to reject the proposed rule R12-4-402, which would further hinder recovery of Mexican gray wolves in AZ. It is time for science to be respected without unnecessary hobbles. The rule change would require USFWS to obtain a state permit before releasing additional wolves into AZ. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem that are vital to maintain a balance not just in the animal kingdom but with the plants and land. AZ needs to work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program. Please reject this proposed rule.

Written Comment: October 14, 2016 (original comment amended by commenter and resubmitted October 20, 2016). On behalf of the Grand Canyon Chapter of the Sierra Club, Center for Biological Diversity, Western Watersheds Project, the Southwest Environmental Center, Western Wildlife Conservancy, The Wolf Conservation Center, and the Grand Canyon Wolf Recovery Project, and pursuant to § 41-1023.B of the Arizona Administrative Procedure Act (APA), I submit the following amended comments in response to the Arizona Game and Fish Commission's (Commission) proposal to amend R 12-4-402. Our amended comments withdraw our point that the notice of proposed rulemaking did not include the full text of the rule and they add

the Rio Grande Chapter of the Sierra Club to the comments, per an email sent to you on October 16, 2016 by Sandy Bahr of the Grand Canyon Chapter of the Sierra Club; otherwise, the substance of these comments are the same as those we submitted on October 14, 2017. A description of the proposed rule was published in the Arizona Administrative Register on September 16, 2016. 22 A.A.R. 2559-2560. If promulgated, the rule would require federal agencies to obtain state permits before releasing wildlife. *Id.* at 2559. The Commission has apparently proposed the rule to thwart the release of additional Mexican gray wolves into the wild by attempting to impose an ill-considered administrative barrier to such releases. While we use the Mexican gray wolf to highlight the shortcomings of the proposed rule, the comments offered here apply to any situation in which the proposed rule were utilized to interfere with federal agencies that deemed wildlife releases necessary to fulfill their federal conservation mandate under the Endangered Species Act or other federal laws. We highlight the circumstances surrounding the Mexican gray wolf and its perilous plight to explain why both the process and the substance of the rule are fatally flawed, and why the Commission should either remand the rule for further proceedings in compliance with the Arizona Administrative Procedure Act or simply decline to adopt it. In compliance with the Rules of the Arizona Game and Fish Commission, R12-4-602, we provide the following information concerning the signatories to these comments: The Grand Canyon Chapter of the Sierra Club is headquartered in Phoenix, AZ and has more than 11,000 paid members and an additional 34,000 supporters who receive information from the Chapter and take action in support of the Chapter's conservation goals. All 11,000 of the paid members and the 34,000 supporters are located in AZ. These comments represent the official position of the Grand Canyon Chapter. The Center for Biological Diversity is headquartered in Tucson, AZ and has approximately 48,575 members, 2,267 of which are located in AZ. These comments represent the official position of the Center for Biological Diversity. Western Watersheds Project is based in Hailey, Idaho and has an office in Tucson, AZ; it has approximately 50 members located in AZ. These comments represent the official position of Western Watersheds Project. The Southwest Environmental Center is headquartered in Las Cruces, NM and has approximately 2,000 paid members and an additional 7,000 supporters who receive information from SWEC and take action in support of SWEC's conservation goals. Although the majority of the Center's supporters live in NM, many are located in AZ. All of the Center's supporters are concerned about the continued survival of the Mexican gray wolf in AZ. These comments represent the official position of the Southwest Environmental Center. Western Wildlife Conservancy is a non-profit wildlife conservation organization located in Salt Lake City. It was founded in 1996. WWC is not membership-based, but has numerous supporters in the West. These comments represent the official position of the Western Wildlife Conservancy. The Wolf Conservation Center (WCC) is a 501(c)(3) not-for-profit environmental education organization headquartered in New York. The WCC participates in the federal Species Survival Plans for the Mexican gray wolf and has played a critical role in preserving and protecting Mexican gray wolves through carefully managed breeding, research, and reintroduction since 2003. The WCC is not membership-based, but has thousands of supporters from the southwest and over 3 million supporters on social media. These comments represent the official position of the WCC. The Grand Canyon Wolf Recovery Project is a non-profit organization based in Flagstaff, representing over 2,000 AZ wolf supporters. The Grand Canyon

Wolf Recovery Project is dedicated to bringing back wolves to help restore ecological health in the Grand Canyon region. These comments represent the official position of the Grand Canyon Wolf Recovery Project. The Rio Grande Chapter of the Sierra Club is headquartered in Albuquerque, NM , with an additional staff office in Santa Fe, NM . The chapter has approximately 7,500 members located throughout NM and in the El Paso, Texas area. The Sierra Club was founded in 1892 and is the oldest and largest conservation organization in the country, with over 2.4 million members and supporters nationally. These comments represent the official position of the Rio Grande Chapter of the Sierra Club. With only 97 individuals in the wild, the Mexican gray wolf is one of the most, if not the most, endangered mammal in North America, and it requires immediate and effective intervention, including additional releases into the wild, to ensure its survival. We highlight the serious plight of the wolf, the urgency of recovery measures, and the USFWS mandatory duty to recover the wolf in the wild to provide context for the proposed rule and for our position that the rule and the assumptions on which it is based are fundamentally flawed. In short, the proposed rule unnecessarily risks putting the Department on a collision course with USFWS as USFWS discharges its mandatory recovery duties under the ESA. Accordingly, we strongly recommend that the Department decline to finalize the rule and continue to cooperate with the USFWS regarding the management of threatened and endangered species. Mexican gray wolves average 50 to 90 pounds and typically stand 25 to 32 inches tall. See Endangered and Threatened Wildlife and Plants; Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf, 80 Fed. Reg. 2512, 2514 (Jan. 16, 2015) (10(j) Rule). Mexican gray wolves are generally believed to have historically inhabited the southwestern United States and Mexico. *Id.* At the northern limits of their historic range, Mexican wolves ranged north into the southern Rocky Mountains and Grand Canyon regions of present-day northern AZ and NM and southern UT and CO. *Id.* at 2538. Once numbering in the thousands, the Mexican wolf population declined rapidly in the early and mid-1900s due to a federal, state, and private campaign that employed poisons and unlimited hunting and trapping to kill wolves and other predators. Ex. 1, Ch. 1 at 13 (excerpts from the Final Environmental Impact Statement for the Proposed Revision to the Regulation for the Nonessential Experimental Population of the Mexican Wolf (2014) (EIS)). These efforts eradicated the species from the United States by the early 1970s, leaving only a small population in Mexico. *Id.* USFWS listed the Mexican wolf as endangered under the ESA in 1976, triggering mandatory obligations ultimately to recover the wolves in the wild. By 1980 Mexican gray wolves were extirpated in Mexico as well. However, between 1977 and 1980, the United States and Mexico initiated a program to capture the last known wild Mexican gray wolves in Mexico, supplement that population with Mexican gray wolves held in captivity in both countries, and establish a captive-breeding program to prevent the subspecies' extinction and to provide Mexican gray wolves for reintroduction into the wild. 80 Fed. Reg. at 2515. Just seven wolves held in that captive-breeding program constitute the founding genetic stock for every Mexican wolf alive today. *Id.* Thus, efforts to enhance the captive population for purposes of release and recovery of the subspecies in the wild, have been going for well over three decades. FWS in 1982 issued a document styled as a "recovery plan" for the Mexican gray wolf that USFWS admitted was incomplete and failed to establish any benchmark for full subspecies recovery. Instead, it set forth a stopgap objective of re-establishing a viable, self-sustaining population of at least 100 Mexican

wolves in the wild within the subspecies' historic range. To implement that stopgap measure, USFWS in 1998 released 11 captive Mexican gray wolves into the wild in a designated Blue Range Wolf Recovery Area straddling the AZ/NM border pursuant to ESA section 10(j)'s experimental population provision, which authorizes modification of the Act's otherwise applicable prohibitions to facilitate such reintroductions. 16 U.S.C. § 1539(j). Contemporaneous with initiation of this reintroduction program, USFWS promulgated a rule in 1998 under section 10(j) to guide management of the reintroduced population. Over the ensuing years, USFWS released additional Mexican wolves into the Recovery Area. See 80 Fed. Reg. at 2516. USFWS expected the reintroduced population to reach the initial 100-wolf objective by 2006, but the population numbered only 83 wolves as of 2013. Ex. 1, Ch. 1 at 18. Further, as USFWS itself has stated, "even at the 1982 Recovery Plan objective of 'at least 100 wolves,'" "the experimental population is considered small, genetically impoverished, and significantly below estimates of viability appearing in the scientific literature." Id. at 22. As this suggests, the population is neither "viable nor self-sustaining." 80 Fed. Reg. at 2551. Numerous factors have contributed to the precarious plight of the Mexican gray wolf including insufficient releases of captive wolves into the wild to improve the wild population's numbers and genetic diversity. First, the small number of individual wolves that founded the captive and reintroduced populations, along with subsequent failure to capitalize on the full genetic potential represented by those founders, has led to inbreeding and loss of genetic diversity. The Mexican wolf captive-breeding program "was not managed to retain genetic variation until several years into the effort." As a result, USFWS estimates that the captive population retains only three founder genome equivalents—i.e., more than half of the genetic diversity of the seven original founders has been lost from the population. See Ex. 1, Ch. 1 at 20; see also Ex. 2 at 11, 60 (2010 Mexican Wolf Conservation Assessment, excerpts). The reintroduced wild population is in even worse shape, with 33 % less representation of the genetic diversity of the seven founders than the captive population. Ex. 1, Ch. 1 at 21. On average, the wolves in the reintroduced population "are as related to one another as outbred full siblings are related to each other." Id. As a result, the sole Mexican wolves existing in the wild suffer from inbreeding depression, including reduced litter sizes, "and without management action to improve [their] genetic composition, inbreeding will accumulate and [genetic diversity] will be lost much faster than in the captive population." Id. Addressing the Mexican wolf's genetic imperilment requires an active program of releasing more genetically diverse wolves into the wild to capitalize on the remaining genetic potential available in the captive population before it is further depleted as captive wolves grow old and die. Thus, to satisfy its duty to recovery the wolf, USFWS must release more wolves into the wild and it must do so despite the proposed imposition of a state permit. These genetic threats are compounded by excessive levels of Mexican gray wolf removals and mortalities. Since the inception of the reintroduction program, illegal killing has been the largest overall source of mortality. Additionally, USFWS has supplemented that unlawful mortality with its own removal of 160 wolves from the reintroduced population since 1998 through killing or capture. Ex. 1, Ch. 1 at 14-15, 18. As USFWS's 2010 assessment of the reintroduction program observed, although some such non-lethal removals were theoretically temporary, they "have the same practical effect on the wolf population as mortality if the wolf is permanently removed (as opposed to translocated)—that is, the population has one less wolf." Id.

Accordingly, the agency concluded, “[c]ombined sources of mortality and removal are consistently resulting in failure rates at levels too high for unassisted population growth.” Ex. 2 at 11. FWS and recognized experts in wolf biology recognize that “[t]he recovery and long-term conservation of the Mexican wolf in the southwestern United States and northern Mexico is likely to depend on establishment of a metapopulation or several semi-disjunct populations spanning a significant portion of its historic range in the region.” 80 Fed. Reg. at 2551. Such a metapopulation—a group of distinct, spatially separated populations that are connected by dispersal, is important to species survival because it facilitates “the maintenance of genetic diversity” and “because it allows for populations to exist under different abiotic and biotic conditions, thereby providing a margin of safety that random perturbation (or, variation) affects only one, or a few, but not all, populations.” Ex. 2 at 12. Peer-reviewed, published scientific information also provides a roadmap for establishing such a Mexican wolf metapopulation. A key study extensively relied upon by USFWS, Carroll, et al. (2014), stated that the southwestern United States has three areas with long-term capacity to support populations of several hundred wolves each. Ex. 3 at 78 (Carroll 2014). These three areas, each of which contains a core area of public lands subject to conservation mandates, are in eastern AZ and western NM (i.e., Blue Range, the location of the current wild population), northern AZ and southern UT (Grand Canyon), and northern NM and southern CO (Southern Rockies). *Id.*; see generally Ex. 4 (Carroll 2006). USFWS’s own selected science team echoed this conclusion in 2012 during the agency’s most recent Mexican wolf recovery planning effort. That blue-ribbon science team produced a draft recovery plan in 2012 based on rigorous population modeling that echoed the peer-reviewed scientific literature’s call for a metapopulation of 750 wolves comprising three core populations of 200 to 300 each. Scientific studies on which the draft plan was based identified suitable habitat for such a metapopulation in the Blue Range, Grand Canyon and Southern Rockies regions. Ex. 5 (2012 Draft Recovery Plan, excerpt). The USFWS updated its 1998 10(j) rule in 2015. The record for the USFWS’s new 10(j) rule demonstrates that USFWS closely coordinated with the Commission during the rulemaking process and adopted the Commission’s demands in the final 10(j) it published in 2015, even where those demands were at odds with the recommendations of recognized wolf experts and peer-reviewed studies. For example, USFWS decided to limit Mexican gray wolf to a single population capped at 300 to 325 individuals, all located south of Interstate 40, and further stated that removal and “translocation to other Mexican wolf populations” would be the preferred method of enforcing the population cap, but “all management options,” apparently including killing, may be exercised. USFWS’s decision to limit the area in which Mexican wolves may range to lands in AZ and NM south of Interstate 40, precluded Mexican wolf access to needed recovery habitat in the Grand Canyon and Southern Rockies regions. See 80 Fed. Reg. at 2540. In support of this limitation, USFWS on May 6, 2015, issued itself a permit under ESA section 10(a)(1)(A), which authorizes otherwise prohibited “takings” of listed species, allowing for the capture of any Mexican wolf that establishes a territory north of Interstate 40. 16 U.S.C. § 1532(19) (defining “take” under ESA). The 10(j) rule that USFWS promulgated in 2015 further adopted a number of new authorizations for the “taking” of Mexican wolves even in the designated experimental population area south of Interstate 40, including the new provision requested by AZ for taking Mexican wolves determined to have an “unacceptable impact” on a wild game herd—a condition to be

determined by a state game agency based upon “ungulate management goals, or a 15 % decline in an ungulate herd as documented by a State game and fish agency.” 80 Fed. Reg. at 2558. Finally, USFWS adopted AZ’s requested phased approach for the release of Mexican wolves in AZ west of Highway 87, which delays the initial release and dispersal of wolves into an area encompassing half of the suitable wolf habitat identified by USFWS on non-tribal land in AZ south of Interstate 40. Id. at 2563. The 10(j) rulemaking for the Mexican gray wolf is just one example of a long history of communication and coordination between the Department and USFWS concerning threatened and endangered species in AZ. This documented history raises legitimate questions about the need for the proposed rule, questions that are particularly appropriate given that the notice of rulemaking provides no more than a vague, unsubstantiated concern that USFWS may not cooperate in the future. This free-floating concern, untethered to documented facts, does not amount to rational decision making and would violate the APA. As explained below, the proposed rule suffers from a number of fatal flaws, including the fact that its use as an impediment to necessary future Mexican gray wolf releases (or necessary releases of any other species listed under the ESA) would conflict with the Supremacy Clause of the U.S. Constitution; that the absence of facts or studies substantiating the need for the proposed rule renders it arbitrary and capricious; and that the notice of proposed rulemaking did not include all of the required information. Finally, the proposed rule invites unnecessary administrative complication, uncertainty and even litigation risk, all of which increase costs and burdens to AZ taxpayers. It is simply bad public policy and should be rejected. The purpose for the proposed rule is not clearly stated, but its impetus appears to be the Commission’s desire to impede further releases of Mexican gray wolves in the state. However, as noted above, the wolf is listed as “endangered” under the ESA, which triggers USFWS’s mandatory duty to conserve, i.e., recover, the wolf in the wild. As explained above, the 10(j) rule that governs USFWS’s management and recovery of the wolf, as well as the peer-reviewed studies of recognized wolf experts, specifically recognize the critical need for additional wolf releases to address the genetic poverty of the existing wild population and, accordingly, provides for additional releases. See 80 Fed. Reg. at 2512. AZ’s attempt to impede these necessary releases by erecting unnecessary administrative barriers would violate the Supremacy Clause. The Supreme Court has long held that in matters related to wildlife management, state law must bow to the requirements of federal law under the Supremacy Clause of the U.S. Constitution. For example, in *Kleppe v. New Mexico*, 426 U.S. 529, 543–46 (1976), the court rejected the state’s challenge to the constitutionality of the federal Wild-free Roaming Horses and Burros Act, which allowed BLM to prohibit the state from enforcing state law and removing wild horses from federal lands. The Court explained: Unquestionably the States have broad trustee and police powers over wild animals within their jurisdictions. But . . . those powers exist only in so far as (their) exercise may be not incompatible with, or restrained by, the rights conveyed to the federal government by the constitution. No doubt it is true that as between a State and its inhabitants the State may regulate the killing and sale of (wildlife), but it does not follow that its authority is exclusive of paramount powers. Thus, the Privileges and Immunities Clause, precludes a State from imposing prohibitory licensing fees on nonresidents shrimping in its waters, the Treaty Clause, permits Congress to enter into and enforce a treaty to protect migratory birds despite state objections, and the Property Clause gives Congress the power to thin overpopulated herds of deer on federal lands contrary

to state law. We hold today that the Property Clause also gives Congress the power to protect wildlife on the public lands, state law notwithstanding. *Kleppe*, 426 U.S. at 543–46. Accord *Hancock v. Train*, 426 U.S. 167, 167 (1976) (holding that Kentucky could not forbid a federal facility from operating without a state air quality permit because “prohibiting operation of the air contaminant sources for which the State seeks to require permits . . . is tantamount to prohibiting operation of the federal installations on which they are located) (citations and quotations omitted). A long line of federal circuit court opinions recognizes the supremacy of federal laws over state laws in the context of federal enforcement of the ESA. See, e.g. *Nat'l Audubon Soc'y, Inc. v. Davis*, 307 F.3d 835, 851–52 (9th Cir. 2002), opinion amended on denial of reh'g, 312 F.3d 416 (holding that “to the extent [a state law banning certain methods of trapping wildlife that prey on endangered species] prevents federal agencies from protecting ESA-listed species, it is preempted by the ESA[,]” because “[t]he Supremacy Clause of the Constitution, Art. VI, cl. 2, invalidates state laws that ‘interfere with, or are contrary to,’ federal law”). In *Gibbs v. Babbitt*, 214 F.3d 483, 499 (4th Cir. 2000), the court rejected a challenge to a USFWS regulation forbidding the “take” of red wolves and explained the constitutional source of federal authority over wildlife: We are cognizant that states play a most important role in regulating wildlife many comprehensive state hunting and fishing laws attest to it. State control over wildlife, however, is circumscribed by federal regulatory power. In *Minnesota v. Mille Lacs Band of Chippewa Indians*, the Supreme Court recently reiterated that “[a]lthough States have important interests in regulating wildlife and natural resources within their borders, this authority is shared with the Federal Government when the Federal Government exercises one of its enumerated constitutional powers.” 526 U.S. 172, 204 (1999). In *Mille Lacs*, the Court upheld Chippewa Indian rights under an 1837 treaty that allowed the Chippewa to hunt, fish, and gather free of territorial, and later state, regulation. *Id.* These Indian treaty rights were found to be ‘reconcilable with state sovereignty over natural resources.’ *Id.* at 205. In light of *Mille Lacs* and *Hughes*, the activity regulated by § 17.84(c)—the taking of red wolves on private property—is not an area in which the states may assert an exclusive and traditional prerogative in derogation of an enumerated federal power. *Gibbs*, 214 F.3d at 499–500; see also *Wyoming v. Livingston*, 443 F.3d 1211, 1227 (10th Cir. 2006) (overturning state trespass prosecution of federal wildlife officers engaged in wolf monitoring under the doctrine of Supremacy Clause immunity, and noting that “Supremacy Clause immunity does not require that federal law explicitly authorize a violation of state law.”); *Strahan v. Coxe*, 127 F.3d 155, 168 (1st Cir. 1997) (“By including the states in the group of actors subject to the Act’s prohibitions, Congress implicitly intended to preempt any action of a state inconsistent with and in violation of the ESA.”); *United States v. Brown*, 552 F.2d 817, 823 (8th Cir. 1977) (upholding defendant’s conviction for unlawful hunting in Voyageurs National Park, despite defendant’s valid state hunting license, because “[u]nder the Supremacy Clause the federal law overrides the conflicting state law allowing hunting within the park.”). AZ state courts also recognize that there is no dispute about the federal preemption of state law. *Def. of Wildlife v. Hull*, 18 P.3d 722, 737 (Ariz. Ct. App. 2001) (“[f]ederal preemption is found where the state law is an obstacle to the accomplishment and execution of the full objectives of Congress”) (citations and quotations omitted)). This long line of authority contradicts the Commission’s working assumption that it can impose a permit system on the USFWS to impede further releases of Mexican gray wolves, or any other listed

species, where such releases into the wild are necessary to ensure the species' recovery. Using the proposed rule in this way would be a futile effort to extend the Commission's authority beyond its reach and intrude on federal sovereignty in violation of the Supremacy Clause. The Commission should reject the rule and instead continue to work with USFWS cooperatively, within the lawful scope of its authority. The Arizona Administrative Procedure Act constrains the boundaries of state agencies' regulatory action. As the Arizona Court of Appeals explained in *Samaritan Health Sys. v. AZ Health Care Cost Containment Sys. Admin.*, No. 1 CA-CV 12-0031, 2013 WL 326012, at *4 (Ariz. Ct. App. Jan. 29, 2013) (unpublished): An agency acts arbitrarily and capriciously when it does not examine 'the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.' *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quotation omitted). In the context of a federal agency regulation, a rule is arbitrary and capricious if 'the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.' *Id.* Under the APA, "[t]he court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion." *Ariz. Rev. Stat. § 12-910(E)*. See also *Ariz. State Univ. ex rel. Ariz. Bd. of Regents v. Ariz. State Ret. Sys.*, 349 P.3d 220, 227–28 (*Ariz. Ct. App.* 2015) (noting that "[a] rule is invalid unless it is made and approved in substantial compliance with the [APA's procedures], unless otherwise provided by law.") Of course, an agency may not engage in rulemaking in area over which it has not authority to act, for example, where it intrudes on areas within the authority of federal agencies. *A.R.S. § 41-1030.C.1*; see also discussion in Point II, above, regarding the Supremacy Clause. As initial matter, the Commission has failed to provide a purpose for the proposed rule, leaving the rule's goal or anticipated result unclear. Not only does this omission leave questions about the fundamental need for the proposed rule, but it undermines efforts to determine whether even the limited conclusory statements in support of the proposed rule meet the rule's purpose. This lack of clarity makes it impossible to discern a "rational connection" between the facts found and the choice made (initiation of a new permit system) exists, a flaw which renders the proposed rule arbitrary and capricious. To the extent the purpose of the proposed rule can be inferred from other text in the notice, the Commission may have intended that the proposed rule would encourage enhanced cooperation between the Commission or the Department and USFWS. See 22 A.A.R. at 2559 ("Due to concerns that federal agencies may become more resistant to cooperating with the states, the Commission proposed to strengthen its rules . . ."). If this is the intent, a better approach that avoids the constitutional violation would be to propose reasonable rules that directly facilitate such cooperation, or pursue nonregulatory measures to address any perceived shortcomings in the Commission's relationship with USFWS, neither of which the Commission apparently examined. Instead, the proposed rule overshoots the purported problem with excessive regulation and unnecessarily raises a host of costs, complications and risk of litigation. At any rate, if the purpose of the rule is to encourage consultation between the USFWS and the

Department, it is a solution in search of a problem. USFWS has long consulted with the Department about management of threatened and endangered species. In the case of the Mexican gray wolf, USFWS even incorporated the Department's management recommendations, including recommendations it had earlier rejected as detrimental to the wolf's recovery, in the 2015 10(j) rule. More specifically, after issuance of the proposed 10(j) rule and draft environmental impact statement—and during the public comment period—FWS entered into extended discussions with AZ state officials about the terms of its final rule. Ex. 6 (collecting correspondence between the Department and USFWS, including USFWS-AZ Aug. 26, 2014 email correspondence; AZ Proposed EIS Alternative (Apr. 2014); Sept. 24, 2014 public meeting transcript where USFWS admits to being in “negotiations with AZ Game and Fish” over rule; AZ letter of Sept. 30, 2014 stating that it “has continued to negotiate changes to the proposed rule that best protect state interests.”; March 2014 email from Ben Tuggle, USFWS Regional Director, to Dan Ashe, USFWS Director, noting that USFWS will ensure “absolute state concurrence” before proposing alternative to expand boundary north of Interstate 40.) The discussions between the Department and USFWS ultimately led to USFWS's inclusion in the 10(j) rule of a population cap of 300 wolves; a provision allowing the state to take Mexican gray wolves that, in AZGFD's view, negatively impact game such as deer and elk; and also a phased approach to limit dispersal of wolves in AZ to areas west of Highway 87 based on similar concerns about impacts on elk hunting. Thus, the Commission's apparent concern about USFWS's failure to consult with the Department regarding management of threatened and endangered species is belied by this recent example of USFWS's repeated consultation with the Department and adoption of the Department recommendations, even where evidence indicated that such measures were harmful to the wolf. The Commission cites no factual basis for any concern that “federal agencies may become more resistant to cooperating with the states,” 22 A.A.R. at 2559, and given this example, it is hard to see how it could lodge such a complaint. The proposed rule does not meet the APA's “substantial evidence” test. A.R.S. § 12- 910(E). In fact, the notice of proposed rulemaking appears to be entirely free of evidence. It admits that the Commission “did not rely on any study in its evaluation of or justification for the rules.” Additionally, the “preliminary summary” of the economic and other impacts contains only conclusory statements that not only fail to cite support but are contrary to the facts – in some cases they even contradict prior statements by ADWR itself. See 22 A.A.R. at 2559. First, the notice asserts that the proposed rule “protects native wildlife in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.” 22 A.A.R. at 2559. Yet the Commission has provided no evidence for public review that wildlife released by federal agencies has caused any of these alleged harms. Indeed, with respect to the 18-year-old Mexican gray wolf reintroduction program, the Department has concluded that the wolves have had little impact on “management of ungulate herds for a harvestable surplus by members of the public,” that available evidence identifies “no discernible impact” from Mexican wolf predation on elk, the wolves' principal prey, in the Blue Range since reintroduction, and that hunter visitation and success rates in the reintroduction area are stable or increasing. See Ex. 1, Ch. 4 at 49-52. Likewise, the Commission provided no evidence that wildlife released by federal agencies may threaten public health or safety. With respect to the Mexican gray

wolf, the Commission provided no evidence that the wolves had harmed members of the public or posed a health or safety threat. Indeed, there have been no documented cases of wolves killing people in North America in the twentieth century. As one researcher has concluded, the risk of wolf attacks in North America is “very low, as recent cases are rare, despite increasing numbers of wolves.” Ex. 7 (Linnell study). Further, “[w]hen the frequency of wolf attacks on people is compared to that from other large carnivores or wildlife in general it is obvious that wolves are among the least dangerous species for the size and predatory potential.” Id. Additionally, the environmental impact statement for the 10(j) rule concluded that “[n]o human injuries from a wolf . . . and no incidents of predatory behavior or prey testing directed at humans have been reported or documented in the Mexican wolf experimental population.” Ex. 1, Ch. 4 at 66-69 (concluding also that the risk of wolves transmitting disease is low). Second, the notice also asserts that the proposed rule “will benefit the Department by ensuring the Commission maintains sovereignty over Arizona’s wildlife.” 22 A.A.R. at 2559. However, as explained above, the extent of Arizona’s sovereignty over wildlife within its borders, and the supremacy of federal law in some circumstances, is a matter of longstanding and well-established law. The proposed rulemaking neither changes that law nor contributes to its application or interpretation, much less “ensure” the state’s sovereignty. Third, the Commission “determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking” and that “there are no costs associated with the rulemaking.” Id. The Commission, however, fails to support this conclusion with the requisite explanation or evidence, and it is contrary to fact. If, as may be the case, the purpose of the rule is to encourage better coordination with USFWS, the Commission should have proposed rules that directly facilitated such cooperation, an option that would not impermissibly intrude on USFWS’s sovereignty to manage threatened and endangered wildlife. Alternatively, as noted above, it could have sought nonregulatory means to address whatever concerns the Commission has. Finally, the Commission’s conclusion that the establishment and administration of an entirely new permit system for wildlife releases would be cost free strains credibility and smacks of irrational decision making. Indeed, the Commission has offered no evidence that it has even examined the cost of permit administration or presented the facts on which it based its determination. At least two additional flaws undermine the proposed rule. First, while the proposed rule would create, and require the Department to administer, a new permit system for wildlife releases, it fails to specify any standards for granting or denying a permit. The absence of such standards virtually guarantees the arbitrary and capricious implementation of the proposed rule, should it be finalized. Similarly, the proposed rule provides no administrative mechanism or process for administering the new permit system. The Commission must provide further detail about the standards and processes by which the Department would administer the proposed rule, which, among other things, would be a basic factor in a full assessment of the costs associated with implementation of the proposed rule. The Notice of Proposed Rulemaking demonstrates that the proposed rulemaking relies on inaccurate information and conclusions. These inaccuracies undermine both the public’s ability to understand the proposed rule and its impacts, and to provide informed comment, the fundamental prerequisites to rulemaking. Accordingly, the administrative process for the proposed rule is fatally flawed and the Commission must reinstitute the rulemaking process with the required information pursuant to A.R.S. § 41-

1022.E (noting that substantial changes to proposed rule require supplemental notice and additional public comment period); see also A.R.S. § 41-1030.A (“[a] rule is invalid unless it is made and approved in substantial compliance with,” among other provisions, A.R.S. § 41-1022.A). The notice of rulemaking includes a question about “[w]hether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law.” In response, the Commission erroneously claims that “[f]ederal law is not directly applicable to the subject of the rule.” 22 A.A.R. at 2560. In fact, the proposed rule focuses entirely on Arizona’s authority to manage wildlife in the face of federal agencies’ discharge of their mandatory duties under federal law, in particular, the ESA. The rule also purports to impose administrative hurdles that would place more stringent requirements on wildlife releases than required by federal law, i.e., the necessity of obtaining a permit from the Department, and it directly implicates the Supremacy Clause of the U.S. Constitution, under which federal law preempts conflicting state laws. The Commission’s failure to respond to this question accurately and to disclose the intertwined relationship and inevitable conflict with federal law is misleading and undermines the public’s ability to fully understand and comment on the proposed rule. Further, the notice’s preliminary summary of the economic, small business and consumer impact of the rule falls so far short of the requirements of the Governor’s Regulatory Review Commission that it should be supplemented as part of a reinitiation of the rulemaking process instead of proceeding to what may ultimately be rejection by the Council. See A.R.S. § 41- (stating that the Council “shall not approve the rule” unless it complies with the detailed requirements of government the economic, small business and consumer impact statement). The APA provides specific requirements for the impact analysis. Pursuant to A.R.S. § 41-1055.A, the impact statement summary must include the following information, none of which appears in the notice of rulemaking: the conduct and its frequency of occurrence that the rule is designed to change. The harm resulting from the conduct that the rule is designed to change and the likelihood it will continue to occur if the rule is not changed. The estimated change in frequency of the targeted conduct expected from the rule change. A.R.S. § 41-1055.B.1-7 requires even more detailed information in the statement itself, yet none of this information is presented in the notice for public review and comment. This omission is more than a technical error. If the Commission had accurately provided the required information, it would have exposed the rule’s inevitable conflict with federal law and the lack of need for the rule, among other things, and facilitated the public assessment of the Commission’s conclusions. Absence of data is no excuse for failure to complete the required assessment; instead the agency must explain “the limitations of the data and the methods that were employed in the attempt to obtain the data” and a characterization of “the probable impacts in qualitative terms. A.R.S. § 41-1055.C. The Commission has failed to provide this information as well. Finally, A.R.S. § 41-1052.D1-10 includes ten requirements that must be met before the Council can approve the rule. The final rule must include, among other things, a comprehensive and accurate impact statement; a demonstration that the probable benefits of the rule outweigh its probable costs, and that the agency has selected the alternative that imposes the least burden and costs; that the rule is written in a manner that is “clear, concise and understandable to the general public;” and that the rule is not more stringent than a corresponding federal law. The Commission has yet to address the ten requirements of the rule, and to

the extent it did so in response to a specific query in the notice about the applicability of federal law to the rule, its statement is erroneous. See discussion above. The notice of proposed rulemaking fails to document any studies or facts that support the necessity for this rule. Instead, it appears that the proposed rule is a symbolic attempt to increase political pressure on USFWS and to influence the way that USFWS carries out its mandatory duties under the ESA. Rulemaking toward this end, however, is excessive, arbitrary and ultimately futile given the supremacy of the ESA recovery mandate. In the end, it will likely lead to further conflict, negatively impact the existing and future working relationship between USFWS and the Commission and Department, and increase the risk of costly litigation. In fact, a similar permit provision promulgated by the state of NM has sparked litigation in both the federal District of NM and the Tenth Circuit Court of Appeals. *NM Dep't of Game and Fish v. U.S. Dep't of Interior*, Case No. CV 16-00462 WJ/KBM. One of the issues in that case is whether the state wildlife agency has the authority to block the USFWS's release Mexican gray wolves pursuant to the state permit requirement. We suggest that, at a minimum, the Commission await the outcome of the NM litigation before promulgating a rule that may well mire it in the same kind of costly litigation in which NM is now embroiled. Finally, the rule is also contrary to the mission of the agency: "To conserve Arizona's diverse wildlife resources. . . ." The Commission has not demonstrated that the proposed rule will result in its conservation or facilitate the maintenance of diverse wildlife resources; indeed, it has not even addressed the issue. **Written Comment: October 16, 2016.** Rio Grande Chapter of Sierra Club should also be included as a signatory to the attached comments, which were originally filed on Friday. Here is the information. The Rio Grande Chapter of Sierra Club is headquartered in Albuquerque, New Mexico, with an additional staff office in Santa Fe. Members number approximately 7,500 and are located throughout New Mexico and El Paso, Texas. Sierra Club was founded in 1892 and is the oldest and largest conservation organization in the country with over 2.4 million members and supporters nationally. These comments represent the official position of the Rio Grande Chapter. **Written Comment: October 16, 2016.** These comments are submitted by the Animal Defense League of AZ and its members and supporters throughout the state. I strongly urge the Commission to reject this proposed rulemaking as it is substantively and procedurally flawed. I hereby incorporate the comments of the Grand Canyon Chapter of the Sierra Club by this reference, and reserve the opportunity to submit oral comments at the Commission meeting in December.

Written Comment: October 14, 2016. Please accept these comments in response to the Notice of Rulemaking Docket Opening and Notice of Proposed Rulemaking regarding a proposed amendment to A.A.C. R12-4-402. See 22 A.A.R. 2569 (September 16, 2016), 22 A.A.R. 2558 (September 16, 2016). These comments are submitted on behalf of Defenders of Wildlife ("Defenders") and represent Defenders' official position. Defenders is a national, non-profit, science-based conservation organization dedicated to the protection of all native animals and plants in their natural communities. Defenders has approximately 375,000 members nationwide and more than 8,000 members in AZ. Defenders also has an office in Tucson, AZ. The Commission seeks to amend R12-4-402 governing "Live Wildlife: Unlawful Acts." The amendment would require federal agencies to obtain state permits prior to engaging in any activity listed under R12-4-402(A). The Commission

proposes adding a new subsection D that states: “Performing activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements.” The activities listed in R12-4-402(A) include the importation, transportation, and release of wildlife within the state pursuant to a federal license or permit. According to the Commission’s stated justification for the proposed amendment, the Commission is concerned that the current rule “could be construed as authorizing a federal agency to release or reintroduce threatened or endangered species in AZ without first obtaining a state permit.” The Commission’s intention is “to ensure the Department maintains sovereignty over AZ’s wildlife and wildlife habitat.” We urge the Commission to abandon the proposed amendment. As an initial matter, the Commission cannot prohibit federal activities absent state consent. The federal government is only subject to state regulation where there is a “clear congressional mandate” or “specific congressional action” specifying that the federal government has submitted to state regulation. *Hancock v. Train*, 426 U.S. 167, 179 (1976) (“[W]here Congress does not affirmatively declare its instrumentalities or property subject to regulation, the federal function must be left free of regulation.”). Specific to the Commission’s concern regarding the release or reintroduction of species protected by the federal Endangered Species Act (“ESA”), the ESA does not subject the statute’s implementation to state approval. In fact, the statute only requires “cooperation” with states “to the maximum extent practicable.” 16 U.S.C. § 1535(a). Thus, USFWS, which maintains paramount authority over management of listed species, cannot be required to obtain a state permit to carry out its responsibilities under the ESA. Further, any state permitting requirement imposed pursuant to proposed R12-4-402(D) that conflicts with USFWS’s implementation of the ESA would be preempted. See *Hillsborough County, Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 712 (1985) (Supremacy Clause of the Constitution invalidates state laws that “interfere with, or are contrary to,” federal law). With respect to importation of wildlife, the ESA expressly preempts any state permitting requirement that would prohibit importation of listed species if there is a federal regulation or permit allowing those same imports. See 16 U.S.C. § 1535(f). Similarly, any state permitting requirement that purports to prohibit USFWS from transporting or releasing federally-protected species would be preempted under fundamental conflict preemption principles. See *Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591, 1595 (2015) (state law that “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” is preempted) (citation omitted). As a result, a blanket rule that USFWS comply with all state permitting requirements, regardless of whether they are consistent with the ESA, is contrary to controlling law. The Commission appears to rely on the Department of the Interior’s (“Interior”) “Fish and Wildlife Policy,” promulgated in 1983, which describes Interior’s approach to state-federal relationships with respect to wildlife laws, including the ESA. See 22 A.A.R. at 2559 (citing 43 C.F.R. Part 24). This policy generally states that USFWS will comply with state permitting requirements with respect to reintroductions of listed species. 43 C.F.R. § 24.4(i)(5)(i). However, the policy contains a critical exception. USFWS need not comply with state permitting requirements where “such compliance would prevent [it] from carrying out [its] statutory responsibilities.” In other words, where compliance with state permitting requirements would prevent USFWS from meeting its obligation to recover species or prevent the agency from exercising the full scope of its statutory authority, USFWS need not comply with state requirements. Thus, this

policy does not grant states veto authority over USFWS's implementation of the ESA. If USFWS allowed a state to exercise such veto authority, it would likely constitute an unlawful subdelegation of federal authority. See *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 565 (D.C. Cir. 2004). The Commission also relies on a recent lawsuit in which NM has challenged USFWS's release of endangered Mexican gray wolves over NM's objections and without NM permits. See 22 A.A.R. at 2259. The U.S. District Court for the District of NM granted a preliminary injunction against USFWS's releases in a decision that is currently on appeal to the United States Court of Appeals for the Tenth Circuit. For all of the reasons detailed in the briefs filed by USFWS and Defenders et al. in that appeal, any application of proposed R12-4-402(D) that would prevent USFWS from importing and releasing federally-protected species pursuant to a duly promulgated regulation or permit would also be unlawful. The survival and recovery of the nation's most imperiled wildlife depends upon the successful implementation of the ESA. For some federally-protected species, such as the Mexican gray wolf, California condor, and the black-footed ferret, recovery depends upon USFWS's implementation of successful reintroduction programs. We urge the Commission to abandon the proposed amendment to R12-4-402 and instead support USFWS's implementation of the ESA for the benefit of all federally-protected fish and wildlife.

Written Comment: October 14, 2016. I am writing to oppose the proposed rule that will require USFWS to obtain a state permit before releasing wildlife into the state. This is a thinly veiled attempt to impede the recovery of the Mexican gray wolf in our state and interferes with the mandate of a federal agency to recover an endangered species. The Mexican gray wolf is already highly endangered, inbred, and in need of immediate new releases and this proposed rule will place unnecessary impediments in the way of preventing the extinction of the species in the wild. In addition, since federal law takes precedence over state law, this rule, if implemented, will result in lawsuits that will cost AZ citizens and waste the time of state agency personnel. Proposed rule change R12-4-402 should be abandoned.

Written Comment: October 14, 2016. I oppose R12-4-402 and strongly urge the Department to avoid the political disgrace that has become the NM Game and Fish Department. Wildlife conservation should be about endangered as well game species. I feel AZ is the last hope for Mexican wolf recovery. The Department should focus its resources on management and cooperation, not legal interference.

Written Comment: October 15, 2016. It has come to my attention that the Department is proposing a rule that would require its approval before USFWS could release anymore Mexican gray wolves. I urge you discontinue this proposed rule change. The federal government is are under court order to come up with a viable plan for the recovery of the Lobo. Even your own wolf biologists have said more Wolves need to be introduced to achieve genetic diversity and an increase in pack numbers. Please allow the federal government to develop their plan before introducing more rules. This rule change looks like a back door means of halting the recovery of the Mexican gray wolf.

Written Comment: October 15, 2016. I urge the Commission to reject the proposed rule R12-4-402, and incarcerate the bill creators, and to incarcerate the members of the Department for allowing the factory farm industry to destroy wildlife. Please bring to justice the entire office for crimes against Mother Nature, please punish them for making people petition them to stop murdering wildlife, so down with the murdering rich meat <expletive> which would further hinder recovery of Mexican gray wolves in AZ. The rule change would require USFWS to obtain a state permit before releasing additional wolves into Arizona. This makes it harder for the USFWS to do its job and would also cost the state precious time and money. Scientists have recommended that additional wolves be released sooner rather than later in order to promote greater genetic diversity in the population. What wolves need is science-based recovery, not political meddling. Wolves are a natural and important part of our ecosystem. Arizona should work with the USFWS to ensure recovery of this species, rather than continue to try to derail the reintroduction program. Please reject this proposed rule.

Written Comment: October 15, 2016. Please abandon the effort to change the rule for introducing Mexican gray wolves into the wild. The rule change requiring a state permit would make it much more difficult for USFWS to get the wolves onto the wild. AZ already opposes having the wolves released but cannot presently circumvent the federal law.

Written Comment: October 15, 2016. I oppose the proposed new rule requiring USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild lands of AZ. I believe this proposal is politically (\$\$) motivated instead of science based. Times are changing, and the value of having an apex predator like the wolf, which has always been healthy for the Trophic Cascade of flora and fauna that the wolf is at the head of, is now becoming economically of great value. In a recent study, the average spending of visitors in the 17 counties around Yellowstone National Park, across the four seasons, about \$22.5 million are directly attributable to the presence of Wolves in the park. Based on the amount of money spent in the entire three-state area around Yellowstone, visitors who specifically want to see or hear Wolves generate approximately \$35.5 million annually. From my studies, the livestock industry is one of the primary opponents of wolf re-introduction. Not all ranchers are opposed to Wolves as some can see the future economic benefit of living with Wolves. Oregon State University recent published a finding that the Rocky Mountain States produce on average between 3% and 5% of total beef production in the U.S. The public awareness of using public lands for grazing at a loss to taxpayers, and therefore the obvious subsidizing of the livestock industry is attracting more and more negative public attention. So when the potential economic benefits of ecotourism, wolves being a big part of that, is recognized vs. a dwindling to insignificant livestock industry in the Rocky Mountains, and a growing demand for recreational uses of public lands in the Rocky Mountains, opposing wolf re-introduction is a very backward, and economically short-sighted view.

Written Comment: October 15, 2016. Please do not make this real change which affects the wolves

negatively. We need wolves they to sustain the ecosystem. They are very important. If you drive them to extinction like they have done to the bees we will have no chance on this planet. Please do not hurt the wolves.

Written Comment: October 15, 2016. I am a fourth generation AZ native. My great-grandfather was a rancher and I still have cousins who ranch. My family actually designed the state flag we use today. I am also a lover of wolves. I ask you to make it easier to release wolves; do not require a state permit for the Federal government to release wolves. Wolves need territory dedicated to them to survive and thrive. Please work to protect them and help in their recovery. As a peak predator they will help improve the health of the entire ecosystem they are released into. I understand the inherent conflict between wolves and ranchers. Frankly, we need to review grazing rights throughout the state as these permits come up. Perhaps it is time to put some territory back into the domain of wolves. With a proper balance of territory wolves can roam and not come into conflict with ranchers. It is only when they do not have enough territory that these conflicts occur. A healthy, wild population of wolves at our border would be a spectacular site. And something my great-grandfather would be proud of.

Written Comment: October 15, 2016. I want to go on record as being in opposition to the Commission's proposed new rule requiring USFWS to get an AZ state permit before releasing any additional Mexican gray wolves into the wild lands of AZ. I believe this proposal is politically motivated instead of science based. Times are changing, and the value of having an apex predator like the wolf, which has always been healthy for the Trophic Cascade of flora and fauna that the wolf is at the head of, is now becoming economically of great value. In a recent study, the average spending of visitors in the 17 counties around Yellowstone National Park, across the four seasons, about \$22.5 million are directly attributable to the presence of Wolves in the park. Based on the amount of money spent in the entire three-state area around Yellowstone, visitors who specifically want to see or hear Wolves generate approximately \$35.5 million annually. From my studies, the livestock industry is one of the primary opponents of wolf re-introduction. Not all ranchers are opposed to Wolves as some can see the future economic benefit of living with wolves. Oregon State University recent published a finding that the Rocky Mountain states produce on average between 3% and 5% of total beef production in the US. The public awareness of using public lands for grazing at a loss to taxpayers, and therefore the obvious subsidizing of the livestock industry is attracting more and more negative public attention. So when the potential economic benefits of ecotourism, wolves being a big part of that, is recognized versus a dwindling to insignificant livestock industry in the Rocky Mountains, and a growing demand for recreational uses of public lands in the Rocky Mountains, opposing wolf reintroduction is a very backward and economically short-sighted view.

Written Comment: October 15, 2016. Mexican gray wolves are important to me and the majority of voters, and their recovery can help restore ecological health to our wildlands. But there is no up-to-date, valid recovery plan for Mexican gray wolves, and new management rules for the wolves contradict the recovery recommendations of leading wolf experts. Very few wolves have been released into the wild and this year, the wild population declined for the first time in six years, from 110 wolves last year to only 97. Instead of allowing

political interference by the states of AZ, CO, NM, and UT, USFWS must expedite the release of adults and families of wolves from captivity and must move forward with the draft recovery plan based on the work of the science planning subgroup. Obstruction by anti-wolf special interests and politics has kept this small population of unique and critically endangered wolves at the brink of extinction for too long and can no longer be allowed to do so. Development of a new recovery plan and expedited releases that will together address decreased genetic health and ensure long-term resiliency in Mexican wolf populations must move forward without delay or political interference. A concerted effort needs to be made to Mexican gray wolf recovery.

Written Comment: October 15, 2016. I am against R12-4-402 and any legislation which would make it harder to release wolves into the wild. We need wolves.

Written Comment: October 15, 2016. Please do not let politics prevent USFWS from enforcing the ESA mandate for wild wolf recovery. These animals are necessary to nature's health.

Written Comment: October 15, 2016. Please reject the proposed rule R12-4-402. The release of captive wolves is likely to be the only way to get a viable, sustainable, population of the Mexican gray wolf. Blocking these wolf releases is not within the authority of the State, it is a federal matter and AZ should let USFWS do its job.

Written Comment: October 16, 2016. I am opposed to the state of AZ instituting any regulation or passing any law, such as R12-4-402, that would require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild. This is yet another obvious attempt, by the state of AZ, to obstruct the recovery of the critically endangered Mexican wolf, which is part of our American heritage of wildlife, not just our AZ heritage of wildlife. It is so clear that AZ is, in fact, trying to prevent the reintroduction of the Mexican wolf into the wild, entirely, which I believe AZ has no right to do; AZ needs to act like a state that is part of a larger union of states, and stop trying to run its state government and wildlife programs like it is a country unto itself, which it is not.

Written Comment: October 16, 2016. The rule change: in which the State of AZ feels federal agencies must be granted permission from a state agency to do their federal agency assigned job is wrong. AZ does not have the authority to make any federal agency apply for a permit for actions taken by any federal agency on federal lands. As a unit of the United States of America, a federal agency's decisions and subsequent actions are solely the business of that agency on federal lands. AZ is doing just that; going on a fishing expedition to see if they can find a court that will falsely give the Commission power it does not currently enjoy. This proposed rule change is a total waste of taxpayer time and money attempting to shackle science based ESA mandated species recoveries to local, retrograde, non-science based expression of opinion. The opinions of the Commissioners has no scientific validity. Each of the Commissioners is a retired executive with no scientific training in

genetics, wildlife management, or endangered species recovery. They enjoy no power over federal agencies nor do they represent any segment of the scientific community. While not stupid, none of them is competent to take any action in public policy but only to render an opinion; not determine policy for third party behaviors. If the Commission wishes to pursue this fool hardy course of rulemaking, the subsequent legal fees and case costs should be deducted from the Department's operation monies where the actual responsibility for this proposed <expletive> contest lies. As a taxpayer, I have no interest in, and do not support, this sad rehashing of authority issues.

Written Comment: October 16, 2016. I oppose R12-4-402 and ask that it be negated/annulled. What the lobos need is science-based recovery, not political meddling. You, the AZ Game and Fish Commission, have proposed a new rule change in another attempt to drive the Mexican gray wolf to extinction. Your rule change would require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Release of wolves to the wild is a critical component of that recovery. Your proposed rule change is another instance where a state that is hostile to lobo recovery is using politics to drive the lobo to extinction. You have been emboldened by similar rules in NM that have temporarily halted lobo recovery pending a court challenge to their legality. However, this temporary halt will not stand. Your proposed rule change is not right, is not legal, and certainly is not moral. Your Creator has given you the ability to protect His creation, the Lobo, and if you do not listen and protect what He created, He will hold you accountable. Please, protect the Lobo. Do not accept R12-4-402.

Written Comment: October 16, 2016. I am writing to comment on the proposed rule change to rule 12-4-402. I strongly urge the Commission to abandon its proposed change. As a resident of NM, a strong supporter of Mexican gray wolf recovery, and a biologist, I am deeply dismayed with the Commission's attempt to turn from science-based recovery of imperiled species and infuse the process with politics. Citizens rely on our state game and fish departments, of which I've been proud to be employed with as a fisheries field technician in OR, to protect our shared wildlife through a rigorous scientific process. When agencies allow politics to drive their decision making, they lose all credibility with citizens. This at a time when the electorate is deeply skeptical of our political process and politicians. The Mexican gray wolf is suffering a severe genetic crisis, which can only be remedied by more releases of wolves into the wild. The Commission's attempts to thwart their recovery will only serve to bring this imperiled species closer to the brink of extinction, a species in which we have already invested a great deal of taxpayer's money to save over the last two decades, and tarnish the Commission's reputation in the eyes of the citizens of AZ and NM.

Written Comment: October 16, 2016. I oppose amending Live Wildlife; Unlawful Acts to state that USFWS would have to obtain a state permit before releasing any additional Mexican gray wolves into the wild. USFWS

is required under the ESA to recover the Mexican gray wolf. Release of wolves into the wild is a critical component of that recovery and needed now to promote genetic diversity in the population. AZ should work with USFWS toward full recovery of the Mexican gray wolf, not continue to hinder the reintroduction program. I urge the Commission to reject this proposed rule change. The Mexican gray wolf needs science based recovery, not state political meddling.

Written Comment: October 16, 2016. I am writing to express my strong opposition to the proposed amendments to R12-4-402, which would require the Department of Interior to seek state permits from the Commission prior to releasing any additional Mexican grey wolves into AZ. I fully and heartily support the federal government (and others') wolf recovery efforts and believe the proposed amendments to the rule to be unnecessary and poses an unwarranted obstacle to the recovery effort. I therefore ask that my opinion be counted as consideration of the amendment moves forward.

Written Comment: October 16, 2016. These comments are submitted on behalf of the Great Old Broads for Wilderness, a national, non-profit organization. Established in 1989, we are advocates, stewards, and educators for wild lands. Ours is a lifetime outlook on the benefits of protecting our wild, public lands. Broads, through Broadbands across the country, work with agencies in stewardship and monitoring of public lands. The Mexican gray wolf is essential to the biodiversity of wild lands. Lobos need to be restored to their essential natural role. Broads does not support the proposed rule change. Please do not interfere in the role of USFWS releasing wolves to the wild to promote genetic diversity in the wolf population. The Mexican gray wolf needs science-based recovery, not State interference with the intent of driving the Mexican wolf to extinction. Let the federal government do its job and recover the Mexican gray wolf.

Summary of Oral Comments from December Commission Meeting: Establishing a new permit for the release of Mexican gray wolves creates a new roadblock for the Mexican gray wolf recovery program. Seventy percent of AZ citizens support the wolf recovery program. Arizona needs more wolves on the landscape and one impediment is more regulation. The current population is dangerously inbred and vulnerable; requiring USFWS to obtain a permit for their release makes no sense. If there must be a permit; the process should be quick and easy. It is not clear what the amendment applies to; the rule amendment appears to be antagonistic towards the Mexican gray wolf recovery and lacks transparency. Requiring USFWS to obtain a permit does not appear to be collaborative or cooperative.

Agency Response: The Commission's intent in proposing the amendments indicated in this rulemaking is to strengthen its rule to avoid any unintended interpretation that a federal agency is exempt from state permitting requirements when conducting any wildlife-related activities. The Commission has always operated under the premise that our federal partners need state authorization for any wildlife activities, and, as a result of an internal review of its rules, the Commission concluded that this requirement was not clearly codified in rule.

Through this rulemaking, the Commission is codifying what has been a common practice with federal agencies. The change will avoid any legal ambiguity and should avoid any disagreement over the applicability of the Commission's rules.

The purpose of the current rule is to protect native wildlife in many ways: preventing the spread of disease, reducing the risk of released animals competing with native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety. The rule prohibits a variety of wildlife-related activities, unless permitted by the Department. Eligibility, application, and licensing requirements are provided under specific rule for each type of license. Typically, the Department issues the USFWS licenses based on the type of activity and species of wildlife. These special license rules are found in Article 4.

While the immediate issue that prompted the internal review of the Commission's rules involved big river fish and the Mexican wolf, the broader concern with federal agencies obtaining state licenses and permits relates to a variety of activities involving many species of native terrestrial and aquatic wildlife.

As stated in the preamble of the Notice of Proposed Rulemaking, the requirement that a federal agency apply for and obtain a state license or permit in order to conduct wildlife-related activities is *not* a new requirement. Under A.R.S. § 17-238, the Commission, at its discretion and under such regulations as it deems necessary, may issue a permit to take wildlife for scientific purposes to any person or duly accredited representative of public educational or scientific institutions, or governmental departments of the U.S. engaged in the scientific study of wildlife. The Department and many federal agencies have always understood that federal agencies need to obtain state permits to remove or release wildlife. On an annual basis, the Department issues approximately 48 scientific collecting licenses to federal agencies for a variety of activities that involve wildlife. Licenses and permits are issued for the purpose of establishing, monitoring, studying, surveying, and translocating wildlife. Since 1998, the Department has not denied a scientific collecting license applied for by a federal agency (the Department's license application records only go back to 1998). Federal agencies that have held or currently hold a Department-issued scientific collecting license include, but are not limited to, the Department of Defense, Department of Energy, Department of Interior, National Forest Service, National Parks Service, National Wildlife Refuge, U.S. Army Engineer Research and Development Center, U.S. Department of Agriculture: Animal and Plant Health Inspection Service, USFWS, U.S. Army, and U.S. Geological Survey.

There are many valid reasons to require any agency to apply for and obtain a state-issued license or permit. The application process allows the Department to ensure duplicate projects are not occurring, and that proposed activities will benefit wildlife. The license/permit process requires federal agencies to coordinate their activities with the Department, which ensures the best management outcome possible for Arizona's wildlife.

The Commission holds that this rulemaking is compliant with the APA. The rulemaking was undertaken after the review of Game and Fish laws and rules, conducted by the Department's Assistant Attorneys General, determined that, while Commission rules as a whole indicate a federal agency is required to obtain a state license or permit to conduct wildlife-related activities in AZ, the rules were not sufficiently clear on this requirement. This review was requested by the Commission after USFWS failed to comply with licensing requirements in NM and the incident involving gizzard shad released by the National Fish Hatchery; not as a

result of an untethered concern. Under A.R.S. § 41-1021, an agency is required to indicate the time during which written submissions may be made, the Department and many other agencies consider this to mean the day and time in which a comment may be submitted in person to the agency. Under A.R.S. § 41-1023(B), the public comment period runs for 30 days from the date the Notice of Proposed Rulemaking is published in the Arizona Administrative Register. The Department believes the statutory time-frame is sufficient. This is supported by Register publications from other state agencies, where in the last 30 Notice of Docket Openings, 22 contained the same language as the notice associated with this rulemaking, six stated comments would be accepted for 30 days from publication of the proposed rulemaking (all six were from one agency), and two stated comments would be accepted until the close of record published in the proposed rulemaking.

The absence of a study does not affect the validity of the rulemaking; a study is a supporting document that supports conclusions included in rule. In this case, the rulemaking is the result of events where federal agencies have not complied with state permit requirements. There is no need to establish an administrative process as a process already exists and federal agencies have previously applied for and obtained special licenses.

In compliance with A.R.S. § 41-1055, the Department includes an Economic, Small Business and Consumer Impact Statement (EIS) with every final rule it submits to the Governor's Regulatory Review Council (GRRC). Although the EIS is not required until a final rule is submitted to GRRC; the Department makes the EIS available to members of the public at every Commission meeting where a proposed and final rule is being considered, unless the rulemaking is exempt from A.R.S. § 41-1055. This rule amendment is not exempt and an EIS is available to the public. Under A.R.S. § 41-1001, in the case of a proposed rule, an agency is only required to provide a preliminary summary of the economic impact analysis in the preamble for the rulemaking. The rule addresses a myriad of prohibited wildlife-related activities; there is no corresponding federal law that lists prohibited activities, thus the rule is based on state law.

The proposed rule amendment clarifies that a federal permit alone is insufficient when a federal agency or its employees perform activities with live wildlife that require a state permit. These activities may include, but are not limited to, the import or export of live wildlife, the possession, transportation, release or reintroduction of wildlife, and the killing of captive live wildlife. A.A.C. § R12-4-402(A). Clarifying that a federal agency or its employees are not exempt from state permit requirements should not be construed that the Department will deny a permit to perform activities with live wildlife. Nothing in the clarification is inconsistent with the past practice of federal agencies applying for and the Department issuing permits. Neither should the proposed rule amendment be interpreted as directed exclusively at federal administration of the Endangered Species Act ("ESA"). It applies more broadly to all federal agencies and employees undertaking activities with live wildlife.

The proposed rule amendment does not conflict with the Constitution's Supremacy Clause because federal law does not explicitly preempt a rule that extends state permit requirements to the federal government, nor does the proposed rule amendment on its face conflict with a federal objective. State and federal authority to manage and conserve wildlife overlaps in many respects with each having concurrent jurisdiction. Federal law recognizes that "[s]tate authority regarding fish and resident wildlife remains the comprehensive backdrop applicable in the absence of specific overriding federal law." 43 C.F.R. § 24.1(a). Federal law further recognizes

that “effective stewardship of fish and wildlife requires cooperation of the several States and the Federal Government.” *Id.* The federal obligation to cooperate with state wildlife agencies in wildlife management reflects “the manifest Congressional policy of Federal-State cooperation that pervades statutory enactments in the area of fish and wildlife conservation.” *Id.* at § 24.2.

With this backdrop of cooperation, federal agencies of the Department of the Interior are required to comply with state permit requirements for federal activities involving the removal or reintroduction of wildlife, provided compliance with state permit requirements does not prevent the federal agency from carrying out its statutory responsibilities. *Id.* at § 24.4.

Federal agencies have long recognized this obligation and have routinely worked with the Department to obtain state permits for activities requiring a state permit. In 2015, the Department issued 48 permits to multiple federal agencies authorizing take, possess, transport or release of wildlife. In some cases, the state permit added stipulations that were necessary to (1) conserve wildlife populations; (2) prevent the introduction and proliferation of wildlife diseases; (3) prevent wildlife from escaping or (4) protect public health or safety. A.A.C. § R12-4-409(H). To date, no federal agency has objected to permit stipulations or claimed that a state permit prevented the agency from carrying out its statutory responsibilities.

As for the assertion ESA explicitly preempts the proposed rule amendment, the preemption provision in ESA applies only to state laws that prohibit what is authorized or permit what is prohibited with respect to the import or export of threatened and endangered species. 16 U.S.C. § 1535(f). Nothing in the proposed rule amendment, for instance, prohibits the U.S. Fish and Wildlife Service (“Service”) from importing threatened or endangered wildlife. The proposed rule amendment simply provides that a federal agency, including the Service, is not exempt from state permit requirements. Requiring the Service to obtain a state permit is consistent with the obligation in ESA that federal agencies “cooperate to the maximum extent practicable with the States.” *Id.* at § 1535(a).

The Department has issued the Service multiple permits to release Mexican wolves into Arizona, and as recently as this year, the Department’s permit authorized the Service to release or reintroduce Mexican wolves consistent with the jointly prepared and approved annual release plan. Provided state permits do not prevent the Service from carrying out its statutory responsibilities, ESA does not preempt state law requiring a state a permit authorizing a federal agency to take, possess or release threatened or endangered species.

The proposed rule amendment clarifying that a federal agency or its employees is not exempt from state permit requirements is not expressly preempted by federal law, nor does the proposed rule amendment conflict with federal law because it does not operate on its face as an obstacle to the accomplishment and execution of a federal objective. The Department routinely issues permits to federal agencies in a manner that does not conflict with federal purposes, and no federal agency has alleged the Department’s permit requirement has prevented it from accomplishing any statutory responsibility.

The agency received the following written comments stating their opinion. Because the written comments do not pose a question or specifically relate to the rulemaking, the agency does not believe a response is

required:

Written Comment: October 5, 2016. Once again you are proving you are becoming more and more political. And like I've called you out before, you are anti-fed. Anyone with half a brain can see right through this. This is in regards to the Mexican gray wolf.

Written Comment: October 7, 2016. I am a decorated combat veteran, hunter, philanthropist, and a proud citizen of AZ. I respectfully ask you put no restrictions on increasing the Mexican Gray population. Let's do the right thing and protect God's creatures. It is our charge and duty.

Written Comment: October 8, 2016. Do not destroy this keystone species.

Written Comment: October 8, 2016. Save our Mexican gray wolves and provide wild protected habitats for them. They are essential to our ecosystems.

Written Comment: October 8, 2016. States should not have the right to say they do not want wolves. Mexican gray wolf recovery is important to people living in AZ, as well as tourists.

Written Comment: October 8, 2016. I do not live in AZ, but I know wolf recovery is critical to the health of the environment for all creatures (not just humans). It has been shown that a healthy wolf population helps other non-carnivore animals lead healthier lives plus the native plants thrive when the ecosystem is in balance. If the goal of the Commission is to maintain a good level of game and fish in the state of AZ, wolves must be part of the plan.

Written Comment: October 8, 2016. Please start protecting the gray wolves instead of driving them to extinction to protect profits of private parties.

Written Comment: October 8, 2016. Your job is to protect our wild life. Wolves are critical, important, and deserve better than what they have received.

Written Comment: October 8, 2016. Please reconsider steps to completely eradicate the wolf from the State. Give them a chance to live and propagate in numbers that will ensure they remain an integral part of Mother Nature's "plan" to keep all things in balance.

Written Comment: October 8, 2016. The gray wolf is facing extinction and you should protect them with your rules and regulations. Your new regulation is a clear and present danger to the gray wolf. Please reconsider and protect the gray wolves.

Written Comment: October 8, 2016. Save the wolves and large predators. They are a vital part of the animal food chain. They deserve to live in forests and national parks unmolested by poachers and hunters.

Written Comment: October 8, 2016. Please release Mexican wolves into the wild again; they are suffering a lot in captivity. Do not play God, let them free please.

Written Comment: October 8, 2016. We are called to be faithful stewards of this precious planet that God has provided us and that includes all of the wildlife and their habitats. Please protect the wolves.

Written Comment: October 8, 2016. I do not see how in good conscience you can act to wipe out a key member of your own ecosystem. This is wrong; the Mexican gray wolf is an important piece of the natural world that should be protected, not eradicated. Please act in a way that preserves the balance of nature, place protections for this species, now.

Written Comment: October 8, 2016. Allow wolves to run free in this state and all states. Extinction is not option

Written Comment: October 8, 2016. Please allow these wolves to live in peace.

Written Comment: October 8, 2016. Please do not make it harder to release Mexican wolves back into the wild. They are a native species that have been scientifically proven to enhance their environment by improving the health of prey animal populations. They are a highly intelligent species that deserves a chance to live free.

Written Comment: October 8, 2016. Wolves.

Written Comment: October 8, 2016. Please abandon this rule change regarding the gray wolves.

Written Comment: October 8, 2016. Please let all wild animals to live in the wild where they belong, no animal should live in captivity and be miserable and mistreated, they deserve to be happy and healthy and have a long life.

Written Comment: October 8, 2016. Please allow releasing additional Mexican gray wolves into the wild.

Written Comment: October 9, 2016. Please stand up for these wolves and their survival. They are essential to the health and survival of so much of the ecology you are charged with protecting.

Written Comment: October 9, 2016. Your opposition to wolf recovery is ridiculous. There can be a mutual respect for the wolves and the opposition. Take note. You are the dying breed. Eventually the younger generation will take a stand as they become more aware and vote you out. It is just a matter of time.

Written Comment: October 9, 2016. Please preserve and protect the integrity of our lands ecosystem. Nurture, not destroy.

Written Comment: October 9, 2016. I understand that your state receives a lot of money from ranching. It is important. However, the science simply does not back the claims regarding how much livestock wolves will take. Cattle are not at risk of going extinct. The Mexican wolf is. Be on the right side of history and allow this species to live.

Written Comment: October 9, 2016. Please allow the Mexican wolf to be released into the wild. Wolves are part of our ecosystem. They are vital to a healthy balance.

Written Comment: October 9, 2016. Please consider how important it is to save these wolves. Please help to save them.

Written Comment: October 9, 2016. It is totally ridiculous that you lawmakers just want to kill all wildlife; no wonder why we live in a world of killing they all follow after you. You are no better. Save the wolves they have better respect for life than you all will ever have.

Written Comment: October 9, 2016. Please let these magnificent creatures live.

Written Comment: October 9, 2016. Please do not delay on wolf releases.

Written Comment: October 9, 2016. Driving wolves to extinction serves no one. It is morally despicable and ecologically disastrous. Scientists have proven that wolves are essential to a healthy ecosystem while humans and cattle do nothing but destroy. Save the wolves, save their habitat, and stop interfering in wildlife preservation. I am sickened by this attack on nature. There is no excuse for obstructing their survival.

Written Comment: October 9, 2016. Please base wolf management decisions on science, not politics.

Written Comment: October 9, 2016. Get your head in the game. It is time to start saving our planet.

Written Comment: October 10, 2016. Please leave the animal world at last. The animals were in front of the world in this world. Please do their best, for this important matter.

Written Comment: October 10, 2016. Please you must do whatever to make certain the Mexican wolf does not suffer. We need the wolves in the wild. Please, do the right thing.

Written Comment: October 10, 2016. Wolves are vital for our environment and are already endangered. Do not make it harder to protect them from extinction. Make your own the wolves' qualities of loyalty, family, love, togetherness, and protect them. Do you really want to tell your children and grandchildren that man has hunted the wolves to extinction and have to show them a picture? Protect the wolves against greed, big money, ranchers, and trophy hunters. Remove cattle from public lands so that the wolves can roam free in their ancestral habitat.

Written Comment: October 10, 2016. My grandparents came to NM in 1910 and were cattle ranchers their whole lives. I am intimately familiar with the ups and downs of that life. While wolves do threaten some cattle and sheep, they are also an important part of our world and specially the wilds in which I have hiked and camped. I also know that due to hardness of a ranching life style many ranchers would be happy to sell their grazing rights especially when it is difficult to access country for a sufficient amount of remuneration, which is now possible through at least one environmental organization. Please allow the reintroduction of wolves to continue without interference.

Written Comment: October 10, 2016. No state permit before releasing Mexican gray wolves into the wild.

Written Comment: October 10, 2016. What the lobos need is science-based recovery, not political meddling.

Written Comment: October 10, 2016. The only reason for keeping Mexican wolves from being released would be corruption, listening to special interests instead of morality and science. Do that, turn your back on these animals out of selfishness and corruption and I beg and pray with all my heart and soul that a curse falls upon all of you. Do the right thing. You know full well what that is. Protect the Mexican gray wolf now.

Written Comment: October 10, 2016. You really should leave my wolves alone.

Written Comment: October 10, 2016. Please do not set these wolves up to fail. We need them alive and free. Do not pass things so they will be slaughtered.

Written Comment: October 10, 2016. USFWS is required by federal law, under the ESA, to recover the Mexican gray wolf. Releases of wolves to the wild is a critical component of that recovery.

Written Comment: October 10, 2016. Please do not make it more difficult for Lobos to be released into the

wild. Many people would like to see the lobos flourish.

Written Comment: October 10, 2016. Please do not be as awful as my state, NM. These animals belong in their ancestral home.

Written Comment: October 10, 2016. Wolves. Save. Them.

Written Comment: October 10, 2016. The greatness of a nation can be judged by the way its animals are treated. Please do not destroy these beautiful wolves, they have just as much right to inhabit this earth as we all do. Please do not deny future generations the opportunity to see and learn about these beautiful wolves in their natural habitat. Let the wolves run free.

Written Comment: October 10, 2016. Citizens of the world, we request rejection of this new regulation in the release of wolves. Objections to the protection of wolves and meetings between persons and other causes do not justify this new regulation. We want our wolves free.

Written Comment: October 10, 2016. As a person who grew up in AZ, it pains me that the state I once called home and graduated high school from would undermine the important work of protecting and saving the Mexican wolf. These wolves are so endangered that in my lifetime they might go extinct. This is unconscionable.

Written Comment: October 10, 2016. Save the Mexican gray wolves. We have too many humans, so save the endangered species and neuter women who have abortions after the first abortion. Yes, I mean this.

Written Comment: October 10, 2016. Do all you can to release wolves back into nature. They are a big part of nature and were here long before cattle and ranchers. Please do what is right and release wolves to where they belong.

Written Comment: October 11, 2016. All lives are connected in this earth, our environment and animals are very important to remain and be protected for the betterment of this planet. Wolves are extremely intelligent animals and highly dependent by the ecosystems. A man assumes he is invincible, but if he stops breathing for 10 to 15 minutes, he will die for sure. Life is too fragile to be blinded by greed and ego. Each and every species has a reason to be the way they are. So, protection of our earthly animals is very necessary and highly important. Therefore, I oppose the killing of our wolves.

Written Comment: October 11, 2016. Stop hurting and killing these beautiful, majestic, beautiful, and spiritual animals. Why is the wolf being blamed for everything? These animals are very necessary to the

ecosystem and the future generation should be experience to see these animals in the wild. It is such as shame that hunters, politicians and farmers do not understand the beauty of these animals. They are Gods creations and should be able to "Be free and run free forever. **Subsequent comment: October 13, 2016.** We will always stand with the wolves. We need to be a voice for them. They have always been my favorite (since I was 5 years old). They are very beautiful, majestic, and amazing animals. They need to let the wolves run free and be free forever.

Written Comment: October 11, 2016. What is going on here? Before you know it, we will have no wolves to protect, thereby causing your job to become extinct. Do your job and prevent the wolves from decimation of the earth.

Written Comment: October 11, 2016. Please stop R12-4-402 from happening. Give the wolf program a fighting chance.

Written Comment: October 11, 2016. Do not make it harder to reintroduce an endangered species. Work with ranchers and wolf specialists to make it fair for both.

Written Comment: October 11, 2016. Why are you making it so <expletive> difficult for this beautiful animal to make a comeback? Are you in the rancher's pockets? Cattle are not endangered. They are desecrating the planet and yet you allow them to roam freely on public lands while confining/limiting the wolves. Your values are a skewed.

Written Comment: October 11, 2016. (submitted by the same person three times) Please save these wolves.

Written Comment: October 11, 2016. Please allow for the survival of the Mexican Gray Wolf. They benefit our environment in numerous ways as I am sure you are aware- rivers, trees, diversity and balance of flora and fauna. They are an essential part of our natural ecosystem. Please do not let them go extinct. We need for more wolves to be released so they can expand their genetic diversity. And we need more land to be available for them to live in.

Written Comment: October 12, 2016. Save wolf.

Written Comment: October 12, 2016. I am asking you to leave the federal rules in place in the recovery of the Mexican wolves in AZ. Do not attempt to bypass the ESA laws as they are now. Please do not cave in to the pressure by the ranching industry to do away with a balanced ecosystem. We need large predators in the wild to keep balance.

Written Comment: October 12, 2016. The Commission is hereby requested to enforce the federal policies for the preservation of our Mexican wolves.

Written Comment: October 12, 2016. How many studies does it take to show that not having top predators around negatively impacts the wildlife hunters want to shoot? Or the negative impact of a lack of predators on the general environment? What do you want? Several hundred such studies? The majority of the public wants wolves in the environment. Historically ranchers who use federal grazing lands have done nothing to protect their assets, their livestock, and do not want to have to start. Enlightened ranchers elsewhere actually look down on such individuals because they believe their livestock is their responsibility and not that of the general public. Where there are wolves there is tremendous tourist activity, and that spells money in the pockets of tour guides, hotel/motel owners, restaurant owners, and gas station owners. Currently there's about \$4 from tourism to every dollar from hunters. Ranchers contribute nothing. The American public wants their wildlife protected and secure. Many areas in AZ, running up to the Grand Canyon would be prime habitat for the Mexican gray wolf and I fully support the free expansion of their current territory. Protecting a few ranchers versus the wishes of the American public is not democracy, and I daresay in the not too distant future, those who are anti-wolf may not hold government positions and the ranchers aren't going to provide make-up paychecks.

Written Comment: October 12, 2016. No new rule changes for these endangered animals. No more permits required. These new proposed rules will help drive the wolves right into extinction.

Written Comment: October 12, 2016. Stop trying to wipe out a keystone predator like the Mexican gray wolf. When will it be enough? When they are all gone? How many species do you push into extinction before our ecosystems totally collapse? How long before it leads to our own extinction?

Written Comment: October 12, 2016. Stop interfering with Mexican wolf recovery program. They are a million years been part of the ecosystem for Life. As opposed to your killing methods.

Written Comment: October 12, 2016. I find it hard to believe that after all the work and money spent on saving the gray wolf from extinction, that it will now be turned over to the states to destroy these efforts. Amazing the stupidity. Please do not tell me that politics trumps solid science. As a scientist I am appalled.

Written Comment: October 12, 2016. The Mexican gray wolf is essential to your balance of nature and survival of all of us. Why kill the few remaining members of the Mexican gray wolf packs? They are native to AZ and you need to keep the natural balance of nature. Who is paying you to wipe them out of existence? Trophy hunters, farmers, and politicians? WY is putting fences up to protect their animals, stock, and wildlife. Not a new solution and one that works better than killing innocent wolves and wildlife.

Written Comment: October 13, 2016. Please do not make it harder to release gray wolves into the wild. It seems to me that the Department want to completely wipe out all the wolves and make it to where they will only have a few left in enclosures and zoos. Wolves are an important part of our ecosystem and must be saved and protected. It also seems the law is against the wolves. Just remember #vetoextinction. Once a species is gone, it is gone forever. Please do not do this to the wolves.

Written Comment: October 13, 2016. This ignorance needs to stop. Why not put the blame where it belongs. On those useless selfish so called people who have the nerve to call themselves humans.

Written Comment: October 13, 2016. Why propose a bill that will help drive yet another species into extinction? It is bad enough, that we took the land from the Indians and are taking precious land from animals. Everyone complains that the deer, wolves, coyotes, bears, etc. are moving into populated areas, but who speaks for the wildlife, who gives the wildlife a voice when population moves into nature? And now you want to persecute the Mexican grey wolf, all you are is a Hitler to animals. That is the only MX immigrant that should stay or be freely deported.

Written Comment: October 13, 2016. Every consideration should be made to allow wolves in their intact packs to be allowed to roam free in their wild habitat. Period.

Written Comment: October 14, 2016. I am writing to stress the importance of the survival of the Mexican gray wolf in the wild. It is time to stop using them as a scapegoat and start seeing them as the missing link to a healthy ecological system. Science has proven time and again that they keep ungulate herds healthy, help trees grow (by keeping ungulates mobile) and keep rodent numbers at bay (to name a few). Since they are so afraid of people, they can easily be deterred from predation. AZ and NM are so lucky to have these beautiful animals in a tiny portion of their forests. I wish people would become more educated about all the good that they do for our ecology. And, I wish that the stupid wolf stories that we have all heard would disappear so big grown men would stop killing them. There are “certified predator friendly” ranches in the US and CD but, in CD where not only wolves exist but, grizzly bears and large cats as well. These people make it work by using deterrents that cost nothing to the rancher. Quite possibly the biggest issue in making this work is public grazing. If you do not keep your livestock within boundaries, anything can happen. Many years ago, John Muir proved how horrible grazing is on our public lands; that is why it is illegal in the high Sierra and all national parks. Please listen to science and teach the ranchers how to co-exist with the wolf. The Mexican gray wolf belongs on our lands.

Written Comment: October 14, 2016. Please help these animals who cannot speak for themselves. If we kill animals because people seem to think they are in the way, we will just have pictures. Our future generations will not know what a live wolf looks like when it is alive and living. People have got stop taking over every inch of property. Stop the killing.

Written Comment: October 14, 2016. I am a person who does not want to see any animal become extinct, too many have gone that way. We humans are responsible for most of these losses and I hope you will not help to have the Mexican wolf become extinct. USFWS has a responsibility to save endangered species, which the Mexican wolf is, as you well know. If we keep throwing unbalance into nature, we will be destroying ourselves. These wolves are needed to help keep the earth in balance, especially here in AZ. I keep hearing about how the elk and deer population is out of control on the north rim of the Grand Canyon. If the wolves were released there that problem would soon be alleviated and the environment would become much healthier as was proved at Yellowstone National Park. Please think like human beings and listen to the science and stop letting politics control you.

Written Comment: October 15, 2016. Please save our Mexican wolves.

Written Comment: October 15, 2016. Protect the Mexican wolves. It is crucial and want most want, not just those with the power to change the rules that threaten them.

Written Comment: October 15, 2016. Please protect the wolf. They are almost extinct.

Written Comment: October 15, 2016. Please start helping the wolves, instead of always stacking the deck against them. They deserve to be reintroduced to the wilderness. We as people of this world, have no business deciding if a sentient creature can be free. They were doing fine, before you made them scarce.

Written Comment: October 16, 2016. I am a concerned citizen that our Mexican wolves are not being reintroduced to wild has the law provides to prevent extinction of these endangered species. Please do what is needed to recovery these animals.

Written Comment: October 16, 2016. Please save the Mexican wolves. We have so few left. Why is this even an issue?

Written Comment: October 16, 2016. You need to stop the rules and regulations regarding these beautiful and much needed animals. Leave them be. Let them be in the wild where they belong. The ecosystem needs them and believe it or not, humans need them also. Maybe people from other states ought to be allowed to come and hunt the people of your state? That is essentially what you are doing to these beautiful mammals that have been there long before any of you.

Written Comment: October 16, 2016. I strongly oppose rule change that would require USFWS to get a state permit before releasing any additional Mexican gray wolves into the wild, but the state's ongoing opposition to

wolves is already painfully clear. This new change would make it even harder for the federal government to do its job and recover lobos.

Written Comment: October 16, 2016. The proposal to amend R12-4-402 to require USFWS to get a permit from the state before releasing Mexican wolves is an unnecessary restriction on that agency's attempt to recover the species as required by the ESA. I favor the recovery of the wolves and see the proposed amendment as the State's attempt to thwart the process for political reasons. Increasing wolves in the wild is essential to their survival. Please let USFWS conduct the necessary operations unhindered.

Written Comment: October 16, 2016. I strongly request that this rule change be denied. It is an impediment to the goal of Lobo Grey Wolf Recovery. The program is already facing many handicaps. More wolfs are needed for healthy stock. We need to minimize inbreeding and additional releases are necessary. The sooner the better.

The agency received the following comment that relates to Article 3 rules (taking and handling wildlife).

Written Comment: October 5, 2016. As a hunter I am more concerned with ethics and fair chase when it comes to the early elk rut hunts. More hunters are talking about this subject. The Commission is on notice.

Agency Response: Thank you for taking the time to submit your comment. Because the topic is outside of the scope of this rulemaking, your comment was placed in the rule record for consideration by the next Article 3 team.

12. All agency's shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used, and if not, the reason why a general permit is not used:

The rule does not require a general permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:

The subject matters covered in the rulemaking (definitions, seasons, municipal and county parks, and unit boundaries) are governed by state law rather than any corresponding federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

The agency has not received an analysis that compares the rule's impact of competitiveness of business in this state to the impact on business in other states.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Not applicable

- 14. Whether the rule previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-4-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

The rule was not previously made, amended, or repealed as an emergency rule.

- 15. The full text of the rules follows:**

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 4. LIVE WILDLIFE

Section

R12-4-402. Live Wildlife; Unlawful Acts

ARTICLE 4. LIVE WILDLIFE

R12-4-402. Live Wildlife: Unlawful Acts

- A.** A person shall not perform any of the following activities with live wildlife unless authorized by a federal license or permit, this Chapter, or A.R.S. Title 3, Chapter 16:
1. Import any live wildlife into the state;
 2. Export any live wildlife from the state;
 3. Conduct any of the following activities with live wildlife within the state:
 - a. Display,
 - b. Exhibit,
 - c. Give away,
 - d. Lease,
 - e. Offer for sale,
 - f. Possess,
 - g. Propagate,
 - h. Purchase,
 - i. Release,
 - j. Rent,
 - k. Sell,
 - l. Sell as live bait,
 - m. Stock,
 - n. Trade,
 - o. Transport; or
 4. Kill any captive live wildlife.
- B.** The Department may seize, quarantine, hold, or euthanize any lawfully possessed wildlife held in a manner that poses an actual or potential threat to the wildlife, other wildlife, or the safety, health, or welfare of the public. The Department shall make reasonable efforts to find suitable placement for any animal prior to euthanizing it.
- C.** A person who does not lawfully possess wildlife in accordance with this Article shall be responsible for all costs associated with the care and keeping of the wildlife.
- D.** Performing activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements.